Ministry of Business, Innovation & Employment

WorkSafe New Zealand

Strategic Baseline Review

12 May 2022

Contents

Preface

This report has been prepared for the Ministry of Business, Innovation and Employment by Brian Sage, Ben Bush, Catherine Taylor and Igor Dupor.

SageBush are public sector finance specialists. We provide advice and support to clients in the public sector across a range of central government agencies in the following areas:

- Strategic support

- Analysis and advice

- Reviews and risk management

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We bring together our communication skills and depth of our public sector knowledge, expertise and experience to provide an objective and independent viewpoint combined with an understanding of the practicalities and sensitivities of operating in the public sector.

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Acknowledgements

We would like to thank members of the WorkSafe Board, external stakeholders, and WorkSafe, MBIE and Treasury staff who gave up their time and offered valuable insights for this work.

WorkSafe's Response to this Review

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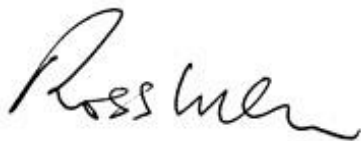
WORKSAFE – WAY FORWARD

Introduction

This statement presents a Way Forward for WorkSafe based on our aspiration to dramatically improve workplace health and safety in New Zealand. It discusses WorkSafe's outcomes- based approach as a key driver for the choices it makes in working to achieve optimum effectiveness as regulator.

WorkSafe's strategic framework is presented in the *Statement of Intent 2021-2025*. It outlines WorkSafe's regulatory approach as a 'really responsive regulator', which draws on the successful approaches of other modern regulators, and which is already delivering opportunities for significant change in improvements within New Zealand. The approach is articulated in the WorkSafe enterprise target operating model which supports delivery on its strategic intent.

The Way Forward also addresses recommendations from the WorkSafe Strategic Baseline Review report 2022 for strengthening links between funding provided and regulatory outputs, and the need to better link activities to outcomes. We acknowledge that the report also highlights that WorkSafe will require increased funding to deliver on its legislative mandate and achieve its outcomes.

WorkSafe's approach is supported by government intent. The statement demonstrates the close alignment of the approach that WorkSafe takes as regulator with government expectations for achieving step-changes in improvements for workplace health and safety following the Pike River tragedy and its mandate under the WorkSafe New Zealand Act 2013 and Health and Safety at Work Act 2015.[1] WorkSafe's Way Forward focuses on integrating health and safety into the way that work is done and is in line with the Government's intent to embed a well-being approach across the public sector.

The statement ends with a discussion on effective modern regulator practice, demonstrating the alignment of WorkSafe's approach with expected good regulator practice both internationally and within New Zealand.

Chairman of the Board

Ross Wilson

Chief Executive

Phil Parkes

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[1]   WorkSafe New Zealand Act 2013 (s10); Health and Safety at Work Act 2015 (s3; s189)

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Way Forward

WorkSafe takes an outcomes oriented, really responsive approach to guide decision-making and regulatory activity

Two fundamental aspects define WorkSafe's orientation as workplace health and safety regulator in fulfilling its mandate under the WorkSafe New Zealand Act 2013. The first is an outcomes approach, where outcomes and impacts are the key drivers for regulatory activity and resource allocation. The second is the adoption of a stance as a really responsive regulator, where regulatory responses augment the traditional 'toolkit' of compliance and enforcement interventions and respond to factors in addition to the behaviour of regulated parties, such as the institutional environment and wider system performance.

Outcomes and impacts drive decision-making and activity

Three outcomes guide WorkSafe's approach to achieve its mandate as regulator:

- healthy work, where work is healthy for workers and those affected by work
- safe work, where work is safe for workers and those affected by work
- equitable outcomes, where work is healthy and safe for all in Aotearoa.

To realise this vision WorkSafe is working to achieve tangible results in six impact areas:

- Health and safety are integrated into work design, set-up and practice
- A capable workforce drives sustained health and safety improvement
- Workers are partners in the health and safety at work system
- The health and safety at work system works with and for Māori, Pacific Peoples, and all workers
- Knowledge and insights inform practice
- Work-related risks are identified and eliminated or controlled.

These outcomes and impacts reflect WorkSafe's mandate for achieving the purpose of the Health and Safety at Work Act 2015, and meeting government expectations for *'an urgent and sustainable step-change in harm prevention activity and a dramatic improvement in outcomes'*.[2]

The aim is for *'shifting mindsets away from health and safety being viewed as an addition to work, to being an integral part of how work is designed, set up and undertaken.'*[3] This includes a strong focus for supporting workers' participation and representation in decisions that affect their health and safety.

WorkSafe's Way Forward focus on integrating health and safety into the way that work is done and is in line with the Government's intent to embed a well-being approach across the public sector. In 2020, the Public Finance Act (1989) was amended to require the Treasury to report periodically on the state of well-being in New Zealand, and the Government to report annually on its well-being objectives via the Budget.[4]

Forestry Sector

The focus of current WorkSafe approaches within the Forestry Sector is already delivering benefits for cultural and system change.

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[2]   Report of the Independent Taskforce on Workplace Health and Safety, (April 2013).

[3]   Statement of Intent 2021-2025

[4]   https://www.treasury.govt.nz/information-and-services/nz-economy/higher-living-standards/using-lsf-and-he-ara-waiora

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Approaching the Forestry Sector through a combination of cultural and 'upstream' lenses

Forestry provides an example of WorkSafe's approach to achieving equitable outcomes which is producing early results for worker participation and increased sector focus on health and safety. Forestry is a sector with a predominantly Māori workforce, which the statistics show has a disproportionate rate of health and safety incidents. Based on research into the characteristics of the forestry sector, WorkSafe has adopted a two-faceted approach to improve health and safety outcomes within the sector. The first is a Kaupapa Māori harm prevention approach that enables the voice of the workers to be heard in a culturally appropriate way. Workers are invited to come along to wānanga to speak up in a culturally safe environment and share their thoughts and concerns. This enables worker participation and provides valuable insights for getting to the root causes of issues.

This is combined with activity to engage with key 'upstream' parties within the sector such as the Eastland Wood Council to share insights and reinforce messages that they need to engage better with their workers on health and safety arrangements, and take their health and safety into account alongside their own commercial interests. The WorkSafe Chair has also engaged with Iwi leaders to increase their understandings of the issues and the role that WorkSafe can play. The focus is to address the risk of harm before it happens, rather than a more traditional singular emphasis on enforcement activity against the individual forestry operators in the middle.

It is early days, but these interactions have had the effect of bringing parties together from both ends of the spectrum in a combined whānau approach to affect cultural and system change for enduring benefits for workplace health and safety. It is an example of an evidence-based approach in getting those individuals who have an influence both for the cause of harm and its prevention to understand this and work in a collective effort to address this. The engagement has also addressed Te Titiriti obligations of parties.

Construction Industry

WorkSafe's approach is affecting changes to attitudes and approaches in the Construction Industry.

Health and safety outcomes in the Construction Industry

The Construction Sector Accord ('the Accord') was launched in April 2019 by the Prime Minister, Accord Ministers, and the industry Accord Development Group made up of 13 sector leaders from across industry and government. The Accord created a platform for industry and government to work together to meet some of the key challenges facing the sector including skills and labour shortages, unclear regulations, a lack of coordinated leadership, an uncertain pipeline of work and a culture of shifting risk. WorkSafe is working with the Accord to encourage a people-centred health and safety orientation rather than lowest cost approach to the process of constructing an asset from the earliest point in the design through the construction process to the final product.

The Accord's 2021 inaugural Beacons Award for recognising the construction sector's most transformative and innovative approaches went to New Plymouth District Council for 'the courage and leadership required to move away from the Lowest Price Conforming tender approach, and to develop long term partnerships in an attempt to deliver better infrastructure for New Plymouth, while also delivering positive health and safety and training outcomes for their supply chain partners. The judges noted how transformative this approach would be if it were adopted widely across the industry.[5]

An example of positive change in one area of supply change leadership in public construction.

WorkSafe recognises that there is more work to be done for communicating its strategy both internally and externally

The WorkSafe New Zealand Strategic Baseline Review report (January 2022) identified that there was not a clear understanding amongst some stakeholders interviewed of WorkSafe's strategy and regulatory approach.[6] WorkSafe agrees with the need to tell a clear strategy story to stakeholders. It knows this is an area where it needs to improve clarity and consistency and is taking steps to address

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[5]   https://www.constructionaccord.nz/news/news-stories/new-plymouth-district-council-wins-beacons-award/

[6]   Ministry of Business, Innovation and Employment – WorkSafe New Zealand Strategic Baseline Review, Sage Bush January 2022

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this. The Statement of Intent, outcomes framework and enterprise target operating model will form a significant part of this story and embedding this within the organisation.

Te Kāhu Mātai

In this regard, a significant initiative is Te Kāhu Mātai which provides the ability to connect with iwi, unions, and business representatives as a forum for rounded debate on health and safety issues.

Enabling stakeholder voice through Te Kāhu Mātai

Te Kāhu Mātai is a partners' council of iwi, business and union partners who engage and provide advice to the WorkSafe Board and bring iwi and social partner representation at a governance level. Whānau, hapū, iwi and other community groups have a stake in ensuring health and safety in workplaces improves. Te Kāhu Mātai is an important forum bringing these groups together with business and unions as social partners to work with WorkSafe.

Te Kāhu Mātai provides a valuable sounding board for WorkSafe when developing programmes or initiatives aimed at better health and safety. In addition, it provides the opportunity for iwi and social partners to act as a conduit for feedback and advice to WorkSafe on health and safety issues affecting business, workers and Māori, and to hold WorkSafe accountable.

Te Kāhu Mātai has convened on three occasions since it was established in April 2021 and has confirmed its support for the strategy as outlined in the WorkSafe Statement of Intent and current delivery priorities.

WorkSafe adopts a really responsive approach to regulation

Responsive approaches to regulation have been adopted and implemented by regulators for many years, the most well-known being that developed by Ayres and Braithwaite in their work with the Australian Taxation Office in the 1990s. This approach involved the regulator *first* understanding the range of attitudes and behaviours in the regulated community (and the risks they pose) from those who would willingly comply, through those who needed some prompting, to the conscious non-compliers, and *second* choosing an appropriate response intervention to deal with the presenting behaviours. This could range from communications to raise awareness and educate through to stronger enforcement actions of sanctions and prosecutions. The focus was very much on the individual situation and the presenting risk.

Really responsive regulation: a more nuanced approach to regulatory practice

More recently, regulators have been adopting more nuanced approaches to regulatory decision-making for really understanding the situation and wider context, and considering risk of harm factors in addition to presenting behaviours. The regulatory response is tuned to a number of additional factors including: the operating and cognitive frameworks of firms, the institutional environment and performance of the regulatory regime, the different logics of regulatory tools and strategies, and to changes in each of these elements.[7]

Adopting a regime orientation means knowing the regulatory landscape, leading, and working with and through others to achieve regulatory outcomes.

This really responsive approach to regulatory decision-making and activity is adopted by WorkSafe and is the underpinning logic of its enterprise target operating model which is a key driver for its regulatory focus and responses. It is also in line with its function under the WorkSafe New Zealand Act 2013 to: *'make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes.'*[8]

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[7]   LSE, Law, Society and Economy Working Papers 15/ 2007 Robert Baldwin and Julia Black

[8]   WorkSafe New Zealand Act 2013 s10 (b)

Traditional enforcement tools are necessary, but not sufficient

In this really responsive model traditional enforcement and education approaches are still essential tools, but they are considered insufficient to bring about the profound changes necessary to keep workers healthy and safe. A modern 'insights-driven' regulator needs to understand the upstream accountabilities, business models, supply chains, terms and conditions, and contracting arrangements that determine whether work is healthy and safe for the people who do it every day.

This does not mean taking the focus off usual activities of education, engagement, compliance and enforcement as required under legislation, but augmenting these with new approaches to achieve outcomes.

The post-Pike River reforms recognised that responsibility for keeping workers safe extended far beyond the direct employer. As the 2012 Independent Taskforce on Workplace Health and Safety put it, the typical response to death and injury had been to '*seek and blame an immediate cause or responsible person'.* Instead, the new regulator needed to *'examine the root causes of incidents'*.[9]

Whakaari/ White Island

This has been the approach taken by WorkSafe in the response to the Whakaari/ White tragedy where 22 people died and 25 were seriously injured.

Response to the Whakaari/ White Island tragedy

On 9 December 2019 Whakaari / White Island, an active stratovolcano island in New Zealand's northeastern Bay

been to assess not only the failure on the day itself, but more importantly the deficiencies that led to the failure on 9 December 2019. In other words, the failure of systems that should have prevented the tragedy in the first place. Taking this approach, WorkSafe is taking enforcement action against those 'upstream' parties for a lack of

people who sold the tickets/ tours and the owners of the island but also agencies that were part of the system failure. It is these 'upstream' parties who are considered significant players in the system with accountability for acting to ensure harm prevention.

The Whakaari/ White Island charges are examples of sheeting responsibility beyond the immediate tour operators to address root cause effects within the system.

Talley's

Another example of this more sophisticated orientation to regulation is the recent approach to achieving improvements in workplace health and safety in Talley's.

Really responsive regulation in action with Talley's

Talley's is a Motueka-based food manufacturing company which caters to both the New Zealand and international markets.

Using ACC data, WorkSafe knows that manufacturing is one of the sectors with the highest rates of acute harm and that meat processing has high rates of injury, and that Talley's has a long-standing poor record of health and safety performance. Despite predecessor organisations and WorkSafe spending many years using all its traditional input/output style regulatory responses of education, guidance, inspections, enforcement notices and prosecutions, the Talley's group of companies has not improved its performance.

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[9]   Independent Taskforce on Workplace Health and Safety 2012

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Things came to a 'public' head when an anonymous whistleblower at Talley's frozen food factory in Ashburton came forward to TVNZ with images of filthy machines, saying it is "just a matter of time" until there is another

At this point, rather than just look at the state of the machinery in one location, WorkSafe took the decision to look at the whole of the company operations to get to the underlying root causes that created its poor compliance record over time. WorkSafe chose a Targeted Complex Intervention approach which looked across the group of companies rather than the single PCBU (Person Conducting a Business or Undertaking) where the event happened. Its intervention spanned upstream duty holders (Directors in the holding company) to the frontline (worker experience to see the impact of culture of work-related mental health – a priority in the Government Health and Safety at Work Strategy). This approach uses several of WorkSafe's six core activities at once in a bespoke intervention, combining enforcement, audit, education, innovation and building worker participation to address root causes and the systemic aspects of the issues.

Another element of the approach was to capitalise on the effect of the negative publicity on Talley's suppliers and distributors as a lever to encourage the company to take notice and effect significant change. WorkSafe's Chief Executive has met with the Talley's board as a part of the intervention approach. Therefore, the board has agreed to undergo a Safe Plus review - a voluntary self-assessment tool for companies which focuses on leadership, worker engagement and risk management. This will reinforce the messages from WorkSafe, and provide tangible solutions for the company to work on. If this is not enough, WorkSafe still has the options of litigation against the directors and senior officers. Or the company could make a long-term commitment to change, perhaps using the voluntary enforceable undertaking provision allowed for in the 2015 HSWA (Health and Safety at Work Act) legislation.

The intent has also been to achieve a 'halo effect' for other manufacturing companies, so that they understand that WorkSafe will not only look at the immediate situation of risk and harm, but also dig deeper to address root causes further up the chain of accountability.

Work Related Heatlh

Another example of modern regulatory practice is improved health outcomes for workers. This is a more sophisticated orientation to regulation as the benefits to improved health outcomes will take time to realise however the health impact on workers is significant.

Really responsive regulation in action- Mentally Heathy Work

Identifying and managing psychosocial risks in the workplace is not a new obligation under the Health and Safety at Work Act or a new area of work for WorkSafe. However, the development of a dedicated Mentally Healthy Work team and the associated development of the Kaimahi Hauora team of specialist health inspectors has given this area greater visibility and focus.

These developments have coincided with cases of workplace bullying and harassment that have been widely covered in the media. These cases and WorkSafe's increased capacity and capability in this area have driven an increase in demand for our engagement, advice and enforcement in this area.

Businesses and workers in Aotearoa are becoming better oriented towards and knowledgeable about mentally healthy work. One of WorkSafe's tasks is to engage with and educate Aotearoa about mentally healthy work – what it is, why it is important and how to achieve mentally healthy workplaces that ensure workers are safe and healthy.

Our primary focus in 2020/21 was to work with external partners to develop simple, evidence-based messages about mentally healthy work to inform and guide business owners, leaders, workers and health and safety professionals. Work by WorkSafe's Mentally Healthy Work team together with our Kaimahi Hauora team to promote a better understanding of mentally healthy work includes: – a plan to develop materials to inform and support health and safety representatives about mentally healthy work.

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A new resource, Mentally Healthy Work in Aotearoa New Zealand, which was released at the end of 2021 – work with the New Zealand Institute of Safety Management, the Health and Safety Association of New Zealand and the SafeSkills conference to share information about mentally healthy work and WorkSafe's role – a qualitative research project about mentally healthy work – the production of new videos called What Good Looks Like, which share stories about mentally healthy work.

The recent WorkSafe New Zealand Strategic Baseline Review report 'strongly' supports WorkSafe *'trying new initiatives and using its full range of regulatory levers to adopt the best approach to improve health and safety outcomes'* and *'ensuring that PCBUs and other duty holders met their duty of care'*. It confirms WorkSafe's approach and suggests that WorkSafe *'continually reinforce that accountability for work-related health and safety sits with businesses and other duty holders.'*[10]

WorkSafe's outcomes-oriented approach provides clear direction for the step-change impacts it needs to make, and for the outputs and activities it needs to engage in to achieve these

Traditional focus on economy and efficiency over effectiveness

The traditional model for applying intervention logic in the public sector has adopted an approach of first determining the activities to be engaged in by an organisation and the inputs required to enable these. Then the model looks to specify the outputs and outcomes that might be achieved through using these resources. This approach comes at the world through an economy and efficiency lens in the first instance, and makes an assumption that, all things being well, effectiveness will follow.

This orientation presents significant issues, particularly for regulatory agencies, where regulatory effectiveness should be the prime focus, with a secondary eye, of course, on economy and efficiency. Back in the year 2000, an influential regulatory practitioner, Malcolm Sparrow, exhorted regulatory agencies in the United States to adopt a focus on outcomes first and process second if they wanted to be effective in their efforts.[11]

Regulatory failure from over emphasis on efficiency over effectiveness

Adopting the traditional model has led to some regulatory failure across the public sector. Agencies are now developing regulatory strategies with the clearer focus on outcomes and assessing the regulatory effectiveness of their interventions.

Working harder is less likely to be effective than working smarter

The traditional model also discourages innovation and breakthrough, as it encourages a dynamic of working harder on the same things versus one of working smarter and stepping back, reflecting on the desired outcome and then adjusting activity and resource allocation accordingly. The more effective intervention logic is to turn the model on its head, focusing first on getting desired outcomes and impacts stated, and then moving to the outputs, activities and inputs required to deliver on these. In other words, effectiveness outcomes up front, followed by efficiency and economy considerations.

The WorkSafe SafePlus initiative encourages organisations to look to effective workplace health and safety outcomes first and then develop solutions to deliver on these

WorkSafe's SafePlus initiative is a good example where the regulator has developed a tool that supports its focus on outcomes and regulatory effectiveness. SafePlus is a self-help, and WorkSafe-

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[10] Ministry of Business, Innovation and Employment – WorkSafe New Zealand Strategic Baseline Review, Sage Bush January 2022

[11] Malcolm Sparrow, The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance 2000

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assisted programme that defines what good health and safety looks like, above minimum legal compliance and prompts pathways to achieve this. It developed out of an early recommendation of the independent taskforce (2012) for something (the Safety Star Rating Scheme) that would address the inadequacy of the current incentives for good health and safety performance, both to incentivise compliance (largely through penalties and other negative consequences) but also to excel beyond minimum requirements[12]. A new approach was necessary.

Having a clear view of outcomes, WorkSafe recognises that it now has to further develop its understanding of the outputs, activities and inputs required and the cost implications of these

WorkSafe agrees with the findings of the WorkSafe Strategic Baseline Review report that there is not a clear link between funding provided and regulatory outputs, and the need to better link its activities to outcomes.[13]

The focus has been on strengthening regulatory effectiveness through developing outcomes to be achieved and the enterprise operating model to get there. WorkSafe is now taking steps to do the following:

- develop measures and tools for evaluating the results of its activity for achieving outcomes and impacts (i.e., measuring its regulatory effectiveness)
- develop the outputs and activities that are required to achieve outcomes and the linkages between them
- develop clearer understanding of the costs of activity to better demonstrate the linkages between funding provided, regulatory outputs and impacts, and
- strengthening its strategic financial management capability as a stronger base for future sustainable funding bids.

This work can flow naturally from the outcomes framework.

It will not be without challenge as, with a really responsive regulatory model, activity can be complex and change in order to respond to the presenting conditions.

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[12]   Independent Taskforce on Workplace Health and Safety 2012

[13]   Ministry of Business, Innovation and Employment – WorkSafe New Zealand Strategic Baseline Review, Sage Bush January 2022

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Summary for Way Forward

WorkSafe will:

- continue to operate as a really responsive regulator, delivering on its mandate under the WorkSafe New Zealand Act 2013 and the Health and Safety at Work Act 2015

- continue to take a balanced approach to its regulatory activity, using traditional education, compliance and enforcement tools combined with risk-based, systems-oriented approaches that address upstream factors, address organisational culture and increase worker participation

- through these measures, look to shifting mindsets away from health and safety being viewed as an addition to work, to being an integral part of how work is designed, set up and undertaken

- take steps to better communicate to stakeholders its strategic intent, desired impacts and operating approach

- develop measures and tools for evaluating the results of its activity for achieving outcomes and impacts (i.e., measuring its regulatory effectiveness)

- develop the outputs and activities that are required to achieve outcomes and the linkages between them

- develop clearer understanding of the costs of activity to better demonstrate the linkages between funding provided, regulatory outputs and impacts, and

- strengthen its strategic financial capability as a stronger base for future sustainable funding bids.

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Alignment with Government strategy and policy

WorkSafe was created to realise the Government's call for 'an urgent, sustainable step-change in harm prevention activity'[14]

WorkSafe's stated outcomes for health and safety and the impacts required to realise these are clear, in line with government expectations, and reflect modern regulator ambitions and practice

The *WorkSafe Statement of Intent 2021-2025* aspires to a vision where *'everyone who goes to work comes home healthy and safe'*. A fundamental underpinning of the strategy is to adopt a risk-based approach where risks are identified as early as possible and eliminated or controlled. As a responsive regulator, WorkSafe has a commitment to targeting harm at the earliest point - *'Harm prevention is at the heart of what we do.'*[15]

WorkSafe is the designated workplace health and regulator under the Health and Safety at Work Act 2015 (s189) and its impact intentions (see above) are in close alignment with the purpose of that Act (s3).

Modern regulator practice is firmly predicated on taking an outcomes oriented, risk-based approach, supported by intelligence, knowledge, and insights, and adopting a systems orientation for outcomes achievement (see below from more detail).

Through the holistic focus on integration of health and safety into work design and practice, seeing workers as partners, inclusion of the wider system of workers, and attention to risk management, WorkSafe's impact drivers reflect these proven orientations for effective regulator practice.

Government policy and the intent of health and safety legislation support WorkSafe's focus for harm prevention and adopting a whole of system approach

The report of the Royal Commission on the Pike River Coal Mine Tragedy (October 2012) was a serious wake-up call on the significant deficiencies that existed in the health and safety at work system within New Zealand. In 2012 the Government established the Independent Taskforce on Workplace Health and Safety (the Taskforce) to advise on possible ways to reduce the rate of fatalities and serious injuries in the workplace.

Step change required in harm prevention activity

The Taskforce called for *'an urgent, sustainable step-change in harm prevention activity and a dramatic improvement in outcomes to the point where this country's workplace health and safety performance is recognised among the best in the world in 10 years' time.'*[16] The then-Minister for Labour asserted *'Success will not be achieved by telling people what to do, but what they need to achieve, and breaking down the "us and them" barriers in order for everyone to recognise their shared purpose.'*[17]

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[14]   Working Safer: A blueprint for health and safety at work August 2013

[15]   WorkSafe Statement of Intent 2021-2025

[16]   Report of the Independent Taskforce on Workplace Health and Safety, (April 2013)

[17]   Working Safer: A blueprint for health and safety at work August 2013

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Blueprint for changing the way we manage health and safety at work

The Government's response to the Taskforce's recommendations was outlined in *Working Safer: A blueprint for health and safety at work August 2013,* as the foundational blueprint for *'Changing the way we manage health and safety at work'*. Key elements of the blueprint to drive focus and activity were the establishment of WorkSafe (December 2013) and provision for the Health and Safety at Work Act 2015.

- Establishment of WorkSafe (December 2013) as the primary regulator in the health and safety system to 'not only enforce, but also educate, guide and coordinate implementation across the system'.
- Enacting of the Health and Safety at Work Act 2015 ('the Act'), with the purpose to provide for a balanced framework to secure the health and safety of workers that includes eliminating or minimising risks, fair and effective workplace representation and cooperation, and assisting persons carrying out a business or undertaking (PCBUs) and workers to achieve a healthier and safer working environment.[18]

WorkSafe's regulatory approach is grounded in the vision of the Blueprint and the subsequent Health and Safety at Work Strategy 2018-2028

The blueprint's vision for achieving significant change through working safer, working smarter, targeting risk and working together is reflected in the ambitions of WorkSafe to influence the way work is done and to *'transform Aotearoa's workplace health and safety performance towards world-class'*[19], through smarter regulatory approaches that address root causes and encourage sustainable health and safety behaviours within the system.

The Government's *Health and Safety at Work Strategy 2018-2028* takes the blueprint further with the aim to *'drive ambitious, sustained and system-wide improvements in our health and safety performance, to significantly lift the wellbeing and living standards of all New Zealand workers and their families'.* The strategy sets two goals and associated priorities to guide the approaches of parties in the system:

- Focusing on what will make the biggest impact to reduce harm
- Building everyone's capability to do this well

Priorities are: encourage leaders at all levels to integrate health and safety; enable workers to be represented, engaged and to participate; lift capability of health and safety practitioners; and Develop and share better data and insights to improve decision making.

The strategy sets out expectations for those in the system, including:

- for businesses - health and safety to be reflected all through the supply chain and in procurement, and with strong worker involvement in identifying and managing risks
- for workers – to be able to influence health and safety, be supported and work in a healthy and safe physical environment.

WorkSafe's orientation is aligned with these government expectations

WorkSafe's orientation for harm prevention in the first place aims to have the biggest impact to reduce harm within the system by addressing risk of harm 'at the source'. WorkSafe's focus on the supply chain and upstream influences on work related harm for health and safety aligns with the systemic expectations of the *Health and Safety at Work Strategy 2018-2028.*

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[18]   Working Safer: A blueprint for health and safety at work August 2013,

[19]   Statement of Intent 2021-2025

WorkSafe's approach supports its mandate under the WorkSafe New Zealand Act

WorkSafe is committed to using insights and the full range of regulatory tools to achieve better outcomes for workplace health and safety. As it has developed a more sophisticated understanding of attitudes, behaviours and workplace contexts through research and evidence it has expanded its toolkit. This expansion does not distract it from engaging in the education, investigation, compliance and enforcement activity and stewardship responsibilities which are also fundamental for any effective regulator. In this regard, WorkSafe fulfils its mandate under the WorkSafe New Zealand Act 2013.

WorkSafe New Zealand Act 2013

WorkSafe New Zealand's functions are to:

(a) advise on the operation of the work health and safety system, including co-ordination across the different components of the system:

(b) make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes:

(c) monitor enforce compliance with relevant health and and safety legislation:

(ca) publish information about-

> (i) its approach to enforcing compliance with relevant health and safety legislation (including where a provision of relevant health and safety legislation overlaps with a provision in another enactment); and

> (ii) its performance standards for completing investigations in relation to enforcing compliance with relevant health and safety legislation:

(d) make recommendations about the level of any funding (including fees or levies) that WorkSafe New Zealand requires to effectively carry out its functions:

(e) develop codes of practice:

(ea) develop safe work instruments:

(f) provide guidance, advice, and information on work health and safety to—

> (i) persons who have duties under the relevant health and safety legislation; and

> (ii) the public:

(g) promote and support research, education, and training in work health and safety:

(h) collect, analyse, and publish statistics and other information relating to work health and safety:

(i) engage in, promote, and co-ordinate the sharing of information with other agencies and interested persons that contribute to work health and safety:

(j) foster a co-operative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to work health and safety:

(ja) foster a co-operative and consultative relationship with the EPA when carrying out its functions, duties, and powers in respect of hazardous substances:

(k) promote and co-ordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way:

(l) perform or exercise any other functions or powers conferred on WorkSafe New Zealand by or under any other enactment:

(m) perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.

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WorkSafe's approach also supports its mandate under the Health and Safety at Work Act 2015

WorkSafe's outcomes-oriented, really responsive approach to regulation is directly in line with achieving all of the outcomes from the Health and Safety at Work Act. The really responsive approach is particularly relevant for providing for fair and effective workplace representation, consultation, co-operation (subsection (b)), encouraging unions and employer organisations to take a constructive role (subsection (c)) and providing a framework for continuous improvement and progressively higher standards (subsection (f)).

Health and Safety at Work Act 2015

Section 3 (1) establishes the purpose of the Health and Safety at Work Act, and for which WorkSafe is the designated regulator (s189).

The main purpose of this Act is to provide for a balanced framework to secure the health and safety of workers and workplaces by—

(a) protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant; and

(b) providing for fair and effective workplace representation, consultation, co-operation, and resolution of issues in relation to work health and safety; and

(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting PCBUs and workers to achieve a healthier and safer working environment; and

(d) promoting the provision of advice, information, education, and training in relation to work health and safety; and

(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

(f) ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under this Act; and

(g) providing a framework for continuous improvement and progressively higher standards of work health and safety.

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Reflecting good modern regulator practice

WorkSafe's strategy and practice is in line with expected good practice for modern regulators both globally and within New Zealand

Some historical precedent for looking at all aspects of the industry or sector

The adoption by WorkSafe of a systems approach and looking at upstream activity in the supply chain might be new within the workplace health and safety system but is in line with early work done within the Civil Aviation Sector in New Zealand. As early as 1948 the Tymms Report observed that:

'*Everyone engaged in aviation is responsible for air safety, and the regulatory system should be such as to ensure that each carries his share of responsibility.*'[20]

Some forty years later, a subsequent review of the civil aviation system in New Zealand came to a similar conclusion that adopting a systems approach was *'one of the keys to improved efficiency in the system'.*[21]

Government expectations for good regulatory practice (NZ Treasury 2017)

The government expects that all government regulatory agencies *'will have regard, and give appropriate effect, to good regulation principles and regulatory stewardship responsibilities within the bounds of their agency resources and mandates.'*[22]

Expectations for an effective regulatory system include having clear objectives, enabling regulators to adapt their regulatory approach to the attitudes and needs of different regulated parties, and to allow those parties to adopt efficient or innovative approaches to meeting their regulatory obligations, and having scope to evolve in response to changing circumstances or new information on the regulatory system's performance.

Expectations for good regulator practice include: maintaining a transparent compliance and enforcement strategy that is evidence-informed, risk-based, responsive, and proportionate to the risks or harms being managed, providing accessible, timely information and support to help regulated parties understand and meet their regulatory obligations, providing simple and straightforward ways to engage with regulated parties, and hear and respond to their views.[23]

These expectations are met through WorkSafe's outcomes-orientation, particularly for 'equitable outcomes and approaches to its regulatory practice as expressed in the enterprise target operating model.

Responsive regulation

We have explained really responsive approaches to regulatory practice earlier in this statement. In terms of good practice, fundamental to these is for the regulator to be *attuned* to their settings insofar as they are heedful of such matters as differences in ideas and approaches, and the potential of different regulatory options. They will be *intelligent* in that they know precisely what they are setting out to achieve, and their systems will enable information processing for performance evaluation and

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[20]   Tymms, Sir Frederick et al, Report of the United Kingdom Civil Aviation Mission 1948 for the Government of New Zealand, (1984)

[21]   Swedavia – McGregor Report Review of Civil Aviation Safety Regulations and the Resources, Structure and Functions of the New Zealand Ministry of Transport Civil Aviation Division, 1988

[22]   Government expectations for good regulatory practice (NZ Treasury 2017)

[23]   Ibid.

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communication to stakeholders on their actions. They will be *dynamic* and display both a sensitivity to changes in their regulatory environment and an ability to adapt their regime to such changes.[24]

Responsive approaches are increasingly being used by regulators globally and in New Zealand.

A graphic and often quoted example is the experience of the construction of the infrastructure to support the London Olympics in 2012. There was a spectacularly low rate of injury incidents and deaths compared with other construction programmes. London 2012 was the safest Olympic build ever, with a reported injury rate of 0.17 per 100,000 person-hours (0.34 per 100 full-time employees by the method used in the U.S.) and far below the 0.55 building industry average in the U.K. The effort lasted 4 years, and for the first time in Olympic history all projects were completed without a fatality.[25]

The difference-maker was the recognition of the tight connection between health and safety, and the interdependence of the two. So, looking after workers' health first meant they were fed well before starting work, and had support to address other health issues that might impact the way they work.

Occupational health and safety support was also provided to encourage workers to make positive changes to how they worked in order to look after their health. In other words, making health and safety an integral part of how the work was done.

The Waka Kotahi *Tū Ake, Tū Māia Regulatory Strategy 2020-2025* expresses its approach as *'regulating in the real world'*, with a commitment to bring clarity and understanding to a complex regulatory system and ensure that all involved are accountable. *'Effective regulation contributes to the economic and social wellbeing of New Zealand and supports our communities to thrive.'*[26]

To do this the agency will target effort for the greatest impact, decision-making will be risk based and focused on harm prevention, activity will be responsive and forward thinking, and informed by evidence and intelligence.[27]

Tests for 'good' regulation

In their comprehensive exposition on regulatory theory, strategy and practice, recognised experts describe five criteria or tests for good regulation[28]. These are:

- Is the action or regime supported by legislative authority?
- Is there an appropriate scheme of accountability?
- Are procedures fair, accessible and open?
- Is the regulator acting with sufficient expertise?
- Is the action or regime efficient?

In describing WorkSafe's approach above we conclude that against these criteria:

- its action is supported by the WorkSafe New Zealand Act 2013 and the Health and Safety at Work Act 2015
- its work on looking at supply chain and upstream accountability is appropriate for addressing root causes and effecting more enduring improvements (though still to be fully evaluated)

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24   Robert Baldwin, Achieving Excellence and Lucidity, in Gary Coglianese ed., Achieving Regulatory Excellence 2017

25   https://www.ehstoday.com/construction/article/21915795/exploring-the-recordbreaking-health-and-safety-performance-of-the-2012-olympic-games

26   Tū Ake, Tū Māia Regulatory Strategy 2020-2025, Waka Kotahi New Zealand Transport Agency

27   Ibid

28   Robert Baldwin, Martin Cave, Martin Lodge, Understanding Regulation: Theory, Strategy and Practice Second Edition 2012

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- its work for achieving 'equitable outcomes' through culturally sensitive ways and means is enabling greater access for worker participation in identifying risks and solutions
- there is more work to be done to identify the specifics of activities and associated capability to achieve desired outcomes and impacts
- it recognises the need to address the efficiency aspects of its work and draw the linkages between funding, outputs and impacts.

Executive Summary

Purpose

The purpose of this review is to assess whether WorkSafe New Zealand (WorkSafe) is managing its resources efficiently and effectively, and to provide advice on the rationale, quantum and targeting of any additional funding. To achieve these objectives we were asked to focus the review on four key questions (refer Terms of Reference in Appendix 18):

1. Does WorkSafe's mix of activities best deliver on its role, strategy and government priorities?

2. How well is WorkSafe performing?

3. What cost pressures does WorkSafe face over the next four years and do they align with its role, strategy and government priorities?

4. Options to manage within different funding paths, and advice on the best path.

This report is structured around these four key questions. The Terms of Reference include further questions that elaborate on the above and are covered throughout our report:

a. What barriers exist to effectively delivering improved workplace health and safety?

b. What are the highest priority investments to deliver improved workplace safety and health?

c. How is WorkSafe balancing its mix of activities to address workplace health issues relative to other priorities such as acute harm?

d. What is the appropriate balance between proactive (e.g. insights and inspection) and reactive (e.g. prosecution) work to achieve harm prevention? Does WorkSafe have a robust process to determine this?

Summary

Context

The role of WorkSafe as the regulator in the health and safety system is broad[1] and challenging. While the 2012 Health and Safety System target to reduce work-related fatalities by 25% by 2020 has been exceeded, the improvements levelled off by 2017/18 and fatality rates have gradually increased over the last three years. Rates of serious non-fatal work-related injuries reflect a similar trend, with an initial reduction in rates levelling off in 2017/18 followed by an adverse trend over the last three years. Rates of work-related injuries resulting in more than a week away from work have risen every year since 2012.

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[1] Stats NZ business demography for February 2020 identifies approx. 557,000 businesses with an estimated workforce of 2.78 million workers (at June 2021). Around 400,000 of these are self-employed.

Workplace health and safety is everyone's responsibility – workers, businesses and organisations have duties and responsibilities – with WorkSafe having a leadership role within and across the system including providing advice about the operation and performance of the system and intervening when appropriate to improve outcomes for all. This creates a challenge for WorkSafe as there are a range of views about how WorkSafe should operate, and where it should focus its attention. WorkSafe is subject to a lot of scrutiny, particularly when there are work-related deaths. If there is a perception they have failed in some way, WorkSafe risks losing its social licence to operate.

Although the three categories of health and safety risks (acute, chronic and health-related) are all included in its legislation, the focus of WorkSafe is broadening from its initial focus on reducing safety-related deaths. WorkSafe is now responding to both health risks *and* safety risks, recognising that its research suggests health-related harm generates 15 times more harm per annum than safety-related harm. This includes long-term/chronic exposure to harm, psychosocial harm and increasing societal expectations (such as workplace bullying).

Since its establishment in 2013, WorkSafe has been moving from a single compliance model to one which develops its information base to enable a more targeted and context-sensitive regulatory approach. WorkSafe is changing the way it operates, taking a more systemic view of how and where it influences and intervenes. It scans the health and safety environment to identify the most appropriate response to each situation. This may include taking a supply chain approach to reducing harm.

From both a regulatory and resource allocation perspective, the challenge for WorkSafe is how to balance its responses with a number of competing demands. These include taking a medium to long term system approach vs intervening directly at the PCBU[2] and duty holder level to address immediate areas of harm, acute vs chronic vs health-related categories of harm, and proactive vs responsive activities.

Given its enabling legislation and broad role, the reality is that WorkSafe will never have sufficient resources to address all health and safety risks. WorkSafe faces a wide range of choices and expectations. The choices made by WorkSafe (about what it does, how it will intervene and how it allocates its resources) directly impact on how stakeholders perceive its effectiveness.

What we expected

Central to a strategic baseline review is a clear and concise understanding of what an agency does (its activities), what resources are applied to these activities, and the contribution these activities make to the outcomes the agency is seeking to achieve. This core information is needed in order to assess the efficiency of an agency and the value add or quality of its outputs.

From a strategic perspective, WorkSafe should be able to clearly describe what it does, the activities it undertakes, the resources associated with these activities, and the impacts on its outcomes. This would provide the basis to assess how WorkSafe is performing including any areas where funding might be limiting its performance.

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[2] Person who Conducts a Business Undertaking, Health and Safety at Work Act 2015, Sec 17.

From a resourcing perspective, WorkSafe should be able to broadly track and report its activities that run across the organisation. This would identify any gaps in resourcing, the extent to which WorkSafe could reprioritise its current resources to address these gaps, and the trade-offs involved in reallocation decisions.

From a performance perspective, WorkSafe should be able to describe what it does and the activities it undertakes to meet its role and responsibilities. This would include performance measures for the most important activities it undertakes with the impact of these activities on outcomes being described and (where possible) measured.

WorkSafe should bring this information together to inform the allocation of discretionary funding into those areas which have the greatest impact on health and safety outcomes. This information would also enable any gaps in resourcing, and the impact on outcomes of any gaps to be identified and communicated to external parties.

WorkSafe should be using activity data (e.g. notifications, assessments, investigations, prosecutions) to identify changes in work demand and whether it needs to respond by reallocating resources or funding. This would include frameworks or workforce planning systems which would enable some conclusions to be drawn on the impact of volume changes on resourcing and funding.

All of these areas do not need to be fully developed or implemented, nor do resources need to be precisely allocated to each individual function or activity. But WorkSafe should be able to describe it does, and the resources attached to different parts of its business in a way that any reader could understand.

What we found

WorkSafe has worked through its establishment phase and is doing many of the things one would expect of a maturing organisation and regulatory agency. Given its starting context and broad mandate, it has responded well to the challenges of leading a new health and safety system in New Zealand.

We identified no significant issues with the way in which WorkSafe undertakes its regulatory role. From the questions we asked, we were able to conclude that appropriate regulatory systems and processes appear to be in place to deliver its core regulatory functions[3]. WorkSafe is looking for new and innovative ways to reduce work related injuries and harm through better work design, changes to the supply chain, and risk-based regulatory interventions. Although we identified three risks where WorkSafe may need to take further action[4], in the course of this review we did not identify any issues we would describe as regulatory failure.

We found WorkSafe's description of what it does unclear, and we did not locate a description of how its core activities are linked to its outcomes.

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[3] However it was not possible to confirm whether all sixteen regulatory functions set out in section 10 of the WorkSafe New Zealand Act 2013 are covered, the extent of coverage, or if there are any gaps. Refer finding (i).

[4] See finding (k) - keeping regulatory tools and legislative instruments up to date; authorisations; and responses to fatigue in the road transport industry

While priority areas have been identified, levels of sustainable funding for these priorities have yet to be identified. Changes in financial forecasts developed in the course of this review indicate that WorkSafe needs to deepen its understanding of its current funding base. This limits judgements about the extent to which high priority areas can be internally funded and is not yet sufficiently robust to support Budget bids.

Related to this, WorkSafe does not have a clear framework or the tools to assess the value of its activities or guide resource allocation decisions. We found that WorkSafe is not yet able to identify the activities and associated resources that underpin each of its core activities. Although at least two previous reviews[5] identified the need to cost and evaluate regulatory activities to inform resource allocation decisions, these recommendations do not appear to have been implemented.

Financial forecasting is minimal and seemed to have been prepared in isolation or without input from operational staff. WorkSafe should be able to provide detailed revenue and expenditure forecasts over the next 10 years which include inflation, approved funding changes, planned business changes and other cost pressures. We were provided with a forecast which included wage inflation for the first four years and no other changes other than the cessation of Whakaari and COVID-19 work. We were advised that this showed that WorkSafe was financially sustainable. This view did not align with the views of the Chief Executive or the Executive Leadership Team who repeatedly advised us that WorkSafe is underfunded.

WorkSafe is rolling out a regulatory model in three transition stages which it considers will take 10 years to fully implement. In the meantime it must continue to take action to address known areas of harm and to reinforce the primary duty of PCBUs and duty holders for healthy and safe workplaces. In the course of this review we noted some instances of known harm[6] where WorkSafe appears to be taking little or no intervention action. WorkSafe should ensure it takes into account the risk of such an approach and the potential for regulatory failure if it does not address known areas of harm while implementing its regulatory model.

WorkSafe's view is that some stakeholders (including this review team) consider that a narrow 'hold PCBUs to account' approach is all that is required to achieve the health and safety outcomes sought. WorkSafe considers the system is more complex than this and many of the gains that have already been made are not enough to push through the current plateau of health and safety outcomes. WorkSafe is concerned this review will simply say it should be doing more inspections and investigations even though experience for more than a decade has been that this is unlikely to improve health and safety outcomes.

We strongly support WorkSafe trying new initiatives and using its full range of regulatory levers to adopt the best approach to improve health and safety outcomes. In this context, however we note that PCBUs have the primary duty of care for healthy and safe workplaces and that WorkSafe is the primary party in the health and safety system responsible for ensuring that

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[5] *Value for Money Review WorkSafe New Zealand* (MartinJenkins, 31 August 2016) and *WorkSafe New Zealand Prioritisation and resource allocation review* (PwC, 2019)

[6] See finding (k) in respect to responses to fatigue in the road transport industry and risks in authorisations

PCBUs and other duty holders meet their duty of care. We consider that WorkSafe should put more emphasis in its dialogue or communications to continually reinforce that accountability for work-related health and safety sits with businesses and other duty holders.

Some external stakeholders considered the willingness of WorkSafe to take decisive enforcement action was variable. It is important that WorkSafe utilises its full range of tools, including enforcement, in a proactive, strategic and deliberate manner. To be an effective regulator it is fundamental that enforcement decisions are made with a clear view of who to target, when and how, and then moving on to target another risk area when the required changes in behaviour have occurred.

It is beyond the scope of this review to consider the extent to which taking an upstream or supply chain approach is an appropriate regulatory approach for WorkSafe. However, in the context of this review, the questions that an upstream or supply chain approach raise are about strategic choices:

- How much effort should WorkSafe put into supply chain issues when known areas of harm may not be being addressed?

- Is the focus on supply chains the most effective use of WorkSafe's resources, particularly when there known gaps in resourcing (for example, in keeping regulatory tools and legislative instruments up to date)?

- To what extent should WorkSafe get involved in areas that do not primarily relate to health and safety issues (such as commercial issues or low pay)?

- How can WorkSafe gain the social licence it seeks for an upstream or supply chain approach without being able to demonstrate its effectiveness?

WorkSafe's role is challenging because there are no entry criteria for most of its regulated audience and the range of PCBUs or duty holders is diverse. Given WorkSafe will never have sufficient resources to fully address all health and safety risks, it is critical that WorkSafe has a clear strategy, allocates its resources to support that strategy and is able to describe how these choices contribute to the achievement of its outcomes.

A clear basis and rationale for strategic allocation decisions is a critical part of any regulator being able to navigate through a wide range of expectations. WorkSafe should focus its efforts and resources in those areas in which it has the greatest impact and on activities that only it can undertake. This will enable WorkSafe to be clear about the outcomes it can realistically achieve and target its resources effectively.

In addition, WorkSafe could increase its effectiveness by doing more to leverage off other players in the health and safety system. Stakeholders commented that WorkSafe could better utilise the resources of associated external organisations to support its role to achieve improved health and safety outcomes. One stakeholder suggested WorkSafe should work more with others to leverage their skills and expertise to improve health and safety in the workplace.

We expect that WorkSafe will require increased funding to deliver on its legislative mandate and achieve its outcomes. However we strongly recommend the matters identified in this report be addressed before funding increases are considered. WorkSafe needs to develop a clear description of what WorkSafe does (its activities), what resources are devoted to these

activities, and the contribution these activities make to its outcomes. Until this has been done, it is not possible to determine which areas or activities require more funding and what impact any increase in funding is expected to have on its outcomes.

Findings and Recommendations

This section outlines our key findings and recommendations under each of the four sections.

1. Role, Strategy and Govt Priorities

Findings

a. **We identified no significant issues with the way in which WorkSafe undertakes its regulatory role. From the questions we asked, we determined appropriate regulatory systems and processes are in place to deliver its core regulatory functions.**

   WorkSafe has worked through its establishment phase. Given its starting context and broad mandate, it has responded well to the challenges of leading a new health and safety system in New Zealand.

   WorkSafe is looking for new and innovative ways to reduce work related injuries and harm through better work design, changes to the supply chain, and risk-based regulatory interventions. Although we identified three risks where WorkSafe may need to take further action[7], in the course of this review we did not identify any issues we would describe as regulatory failure.

   However, WorkSafe has not linked each of the sixteen regulatory functions set out in section 10 of the WorkSafe New Zealand Act 2013 to business groups or activities. Although it seems all sixteen functions are covered, it was not possible to form a view on the extent of the coverage, or if there are any gaps.

b. **Given WorkSafe's role in the health and safety system is broad and challenging, it needs a clear and concise strategy that is compelling, specific and outcomes focused.**

   WorkSafe should be able to clearly describe its role, what it does to deliver on its regulatory responsibilities, and how its activities link to its legislative functions. We were provided with numerous documents which lacked clarity, presented different information and in some cases required piecing together to develop the overall picture.

   WorkSafe needs a clear and concise strategy that is compelling, specific and outcomes focused. The strategy needs to be widely accepted and easily understood to galvanise the commitment of many parties to deliver the step-change needed to improve health

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[7] See finding (k) - keeping regulatory tools and legislative instruments up to date; authorisations; and responses to fatigue in the road transport industry

and safety outcomes. Lack of a clear and understood strategy is at the heart of WorkSafe's challenge in securing support from all of its key stakeholders.

c. **Research initiated by WorkSafe has identified that work-related health harm has a significantly greater impact on health and safety outcomes than safety-related harm. It is not clear that the implications of this finding have been fully explored in its strategy, priorities and resourcing.**

WorkSafe was established with responsibilities for both safety and health harm at work. In the first years following its establishment, safety at work was its primary focus given Pike River. Safety was the driver of the activities, types of skills and organisational competencies that WorkSafe developed initially. More recently, research initiated by WorkSafe estimates that a worker is 15 times more likely to die from a work-related disease than from a workplace accident[8]. WorkSafe should use its strategy review process to identify the implications of these findings on its strategy, priorities, resourcing and trade-offs. This will enable WorkSafe to clearly position itself in terms of the health and safety outcomes it can realistically achieve.

d. **We were not able to locate a description of how WorkSafe's regulatory activities contribute to the achievement of its outcomes.**

WorkSafe should be able to provide us with a clear description of the mix of activities it uses to deliver its regulatory role, and how these activities support the achievement of its outcomes. Although WorkSafe has recently refreshed its strategic operating framework, this is not described in a simple and clear manner. We were directed to numerous documents which lacked clarity, presented different information, required piecing together and did not describe how each of its activities contributed to achievement of its outcomes. Understanding the rationale for regulatory activities is an essential part of ensuring stakeholder buy-in and support for proposed funding increases.

e. **WorkSafe should continually reinforce the role businesses have for workplace health and safety.**

Given the clarity of responsibilities in the Health and Safety at Work Act 2015, we recommend that WorkSafe place more emphasis on reinforcing businesses are accountable for workplace health and safety given it will never have enough resources or reach to engage with every business. In the absence of this focus there is a risk of business operators not taking their duty of care seriously and considering the likelihood of WorkSafe taking enforcement action as being low.

Our view, which was shared by a number of the external stakeholders we interviewed, is that WorkSafe needs to put more emphasis on reinforcing the legal responsibility of PCBUs and other duty holders for workplace health and safety.

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[8] https://data.worksafe.govt.nz/editorial/work_related_health

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f. **WorkSafe could increase its effectiveness by doing more to leverage the skills, expertise and reach of other players in the health and safety system.**

External stakeholders recognised WorkSafe's broad mandate and challenging role and would like to be more involved in supporting improved outcomes. WorkSafe could increase its effectiveness by doing more to leverage the skills, expertise and reach of other players in the health and safety system. Stakeholders commented that WorkSafe could better utilise the efforts and resources of associated external organisations to support its role to achieve improved health and safety outcomes. This includes collaborating in new ways to achieve outcomes that WorkSafe cannot deliver by itself.

g. **WorkSafe needs to show that its focus on influencing the supply chain or upstream activities is an effective use of time and resources and should closely monitor the effectiveness of this approach.**

WorkSafe is starting to consider broader issues that impact on workplace health and safety in the supply chain. These include reducing pressure from Boards (over and above those who have control of the workplace) and investors to maximise returns which may put pressure on PCBUs and other duty holders further down the supply chain to cut corners on health and safety. It is not clear from either a strategic resource allocation or outcomes perspective the extent to which this is an effective use of time and resources. WorkSafe should ensure it takes into account the risk of potential regulatory failure if it does not address known areas of harm while implementing this approach.

h. **As 'mentally healthy work' has such a broad scope, WorkSafe should adopt a highly targeted approach to allocating its resources in this area.**

WorkSafe is taking a considered and deliberate approach to interventions in the mentally healthy work area, and this was generally supported by stakeholders. Some voiced concerns about mentally healthy work becoming a big area for WorkSafe and thought the term 'mentally healthy work' was problematic. Taking a highly targeted approach will be important to enable WorkSafe to be clear about the outcomes it can realistically achieve and target its resources effectively in this area.

i. **Although we do not have concerns that WorkSafe is operating in any way that is inconsistent with the Health and Safety at Work Strategy 2018-2028, how WorkSafe activities support government priorities is unclear.**

It is unclear how WorkSafe supports the delivery of government priorities. This echoes the findings above about the need to improve the description of how WorkSafe's regulatory activities contribute to the achievement of its outcomes.

j. **WorkSafe needs to strengthen how it defines, communicates and mitigates risks to the performance of the health and safety system.**

WorkSafe's definitions of regulatory risk are inconsistent and lack clarity. This makes it difficult for resources to be focused on those areas in which it has the greatest impact and on activities that only WorkSafe can undertake. A clear definition of regulatory risk will help guide operational and resource-allocation decisions, and identify the information that needs to flow to the Board for governance purposes.

k. **We noted three risks where WorkSafe may need to take further action - keeping regulatory tools and legislative instruments up to date; authorisations; and responses to fatigue in the road transport industry.**

Our view on each of these risks is:

- *Keeping regulatory tools and legislative instruments up to date*: out-of-date regulatory tools and legislative instruments represent a risk to the effectiveness of the health and safety system. WorkSafe should be funded on a sustainable and ongoing basis to maintain its 'regulatory real estate' including the introduction and implementation of changes in regulations. WorkSafe and MBIE need to determine the 'right' level of resourcing for this ongoing activity.

- *Processing authorisations*: A December 2020 internal review found that current levels of Authorisations Officers are insufficient to achieve timely processing of authorisations to ensure regulatory requirements are met. Progress to mitigate this risk is slow. WorkSafe should reallocate its resources to address known high priority areas rather than waiting for Budget bids to provide the required funding.

- *Responses to fatigue in the road freight transport industry*: given the current lack of agreement over roles and responsibilities of government transport-related agencies, as the regulator and system leader WorkSafe should be intervening as a matter of urgency. This could include conducting a targeted complex intervention in fatigue in the road transport freight industry.

How WorkSafe addresses these risks are not matters that can be resolved by an external party or by receiving additional funding at this stage.

l. **WorkSafe does not consider it is funded for activities in the transport sector.**

As part of our discussions on supply chains in the transport sector, WorkSafe expressed a view that it is not funded for activities in the transport sector. We do not support this view given PCBUs conduct transport operations and control workplaces. It is appropriate that transport workplaces meet the health and safety responsibilities in the transport sector like any other business.

Recommendations

It is recommended that WorkSafe:

1. Formally links each of the sixteen regulatory functions set out in section 10 of the WorkSafe New Zealand Act 2013 to business groups and activities to provide assurance that all sixteen functions are covered, the extent of the coverage, and if there are any gaps.

2. Takes time to reflect on its first seven years as New Zealand's primary health and safety regulator to develop a clear and concise strategy that is compelling, specific and outcomes focused. The strategy needs to be widely accepted and easily understood to galvanise the commitment of many parties to deliver the step-change needed to improve health and safety outcomes. This should be followed by a review of key accountability and internal documents to ensure they tell the WorkSafe story clearly and simply, and are consistent with each other and agreed messaging.

3. Fully scopes the implications of its recent work-related harm research on its strategy, priorities and resourcing. It should use the strategy review process recommended above to identify and confirm the trade-offs, choices and priorities needed to position itself in terms of outcomes it can realistically achieve.

4. Develops a clear description of the mix of activities it uses to deliver its regulatory role and how these activities contribute to the achievement of its outcomes.

5. Continually reinforces in its engagements and communications that accountability for work-related health and safety sits with businesses and other duty holders and that WorkSafe's role as regulator is to monitor and support these parties to meet their responsibilities.

6. Fully utilises the efforts and resources of other parties to achieve outcomes that WorkSafe cannot deliver by itself alone.

7. Reviews its supply chain and/or upstream approach from a strategic choice perspective and closely monitors the effectiveness of this approach.

8. Takes a highly targeted approach to allocating its resources to support PCBUs and duty holders in addressing mentally healthy work issues in workplaces. This will enable WorkSafe to be clear about the outcomes it can realistically achieve and to minimise fragmentation across other agencies that have mental health responsibilities.

9. Clearly identifies the activities it is undertaking to support Government's Health and Safety at Work Strategy 2018-2028 so progress can be followed by external stakeholders, the Minister and MBIE.

10. Develops a clear definition of 'regulatory risk' and uses this to communicate and mitigate risks to the performance of the health and safety system.

11. Considers what further action should be taken in respect of the three risks identified in Key Finding (k) – that is *Keeping regulatory tools and legislative instruments up to date*, *Processing authorisations*, and *Responses to fatigue in the road freight transport industry*.

12. Reconsiders its view that it is not funded for activities in the transport sector.

2. WorkSafe's Performance

Findings

m. **The three key Health and Safety System Targets[9] show an adverse trend over the last three years. WorkSafe is identifying the causes and is taking steps to further reduce rates of acute harm.**

Since establishment, two of the three system targets (Fatal work-related injuries and Serious non-fatal work-related injuries) showed an initial reduction in injury rates, but this trend levelled off by 2017/18 and injury rates started to increase. The third measure (Work-related injuries resulting in more than a week away from work) has increased consistently over the eight years since establishment. Overall the three system targets show an adverse trend over the last three years.

WorkSafe is keenly aware of these trends, is identifying the causes and is taking steps to further reduce rates of acute harm. The examples we were given show that WorkSafe is looking for new and innovative ways to reduce work-related injuries through better work design, changes to the supply chain, and risk-based regulatory interventions.

n. **Activity volumes have generally been stable or decreased, but it is difficult to draw conclusions about the impacts on resourcing or funding.**

Over the eight years since establishment, most activity volumes (with the exception of some directions, letters and notices) were stable or decreased. This suggests that additional resourcing or funding is not required, but it is not possible to draw definitive conclusions because:

- Not all WorkSafe activities are measured; and

- Lack of a framework to link volumes (e.g. notifications, assessments, investigations, prosecutions) to activities and resourcing.

We were advised that these volume decreases are positive changes and reflect a more targeted regulatory approach, in line with the Enforcement Decision-making Model and investigations policy.

o. **WorkSafe's strategic and operational outcomes would significantly benefit from being able to identify or value the resources currently allocated to activities, and to identify and assess alternative resource allocations. At present, WorkSafe has no clear framework or tools to assess the value of activities or guide resource allocation decisions.**

To guide resource allocation decisions WorkSafe should have a decision-making framework based on the standard public sector inputs-outputs-outcomes model.

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[9] WorkSafe Annual Report 2019/20 (pages 15 and 75) refers to the three measures – *Fatal work-related injuries, Serious non-fatal work-related injuries and Work-related injuries resulting in more than a week away from work* – as system targets.

WorkSafe does not have the key components in place to identify or value the resources currently allocated to activities, or to identify and assess alternative resource allocations. The components which are missing include:

- Unclear links between inputs-outputs-outcomes[10].

- Outputs are not costed (in FTEs or $$$s).

- Not all activities are measured, and changes are not monitored over time.

- Limited assessment of the benefits or the 'relative value' of each output in achieving outcomes.

Lack of an inputs-outputs-outcomes framework makes it difficult to assess the efficiency and effectiveness of WorkSafe or to form a view on whether it is adequately resourced to deliver on its legislative mandate. While it will be possible to identify the funding needed for specific additional capacity, it will be difficult to assess whether this could be funded internally or whether new funding will be needed. This framework is important to allow WorkSafe to give confidence to the Minister and MBIE that additional resources are required, the primary areas where they will be applied and the expected impact on outcomes. This will also make it easier to identify trade-offs and strategic choices for Ministers.

There have been two previous reviews[11] which have identified the need to cost and evaluate regulatory activities to inform resource allocation decisions, but these recommendations do not appear to have been implemented.

p. **WorkSafe's Research and Evaluation team appears to have the capabilities to assess the value of WorkSafe's outputs but it is not being fully utilised.**

The focus of WorkSafe's Research and Evaluation team is shifting to understanding the causes of workplace harm and how these can be modified. This change should provide the information needed to develop the missing links between inputs-outputs-outcomes and to identify the benefits or the 'relative value' of regulatory activities in achieving outcomes. Beyond this, it appears there has been little demand to use the Research and Evaluation team to assess the value of WorkSafe's outputs to guide the allocation of resources and support the achievement of outcomes.

However, the building blocks are there. The Research and Evaluation team has the right focus, knowledge and skills. It has produced a very good guide - *Monitoring and Evaluation 101* – which provides a sound foundation to build knowledge and buy-in

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[10] In the 2021/22 Statement of Intent and Statement of Performance Expectations these levels are referred to as Core Regulatory Activities, Impacts and Goals.

[11] Value for Money Review WorkSafe NZ, Martin Jenkins, 31 August 2016 and WorkSafe NZ Prioritisation and Resource Allocation Review, PwC, Nov 2019.

across the organisation. WorkSafe should ensure it has sufficient capability within the Research and Evaluation Team to enable a successful roll-out of these skills.

Recommendations

It is recommended that WorkSafe:

13. Develops workflow process models which use activity data (e.g. notifications, assessments, investigations, prosecutions) and other insights to identify the impacts on work demand and use these to measure and manage its resources.

14. Develops a clear framework to assess the value of activities and guide resource allocation decisions. This should include four key elements:

    - Clear linking of inputs-outputs-outcomes.
    - Output costing (in FTEs & $$$s).
    - Activity measurement and monitoring.
    - Assessment of benefits of each activity.

15. Increases the focus on evaluation of outputs to guide the allocation of resources and support the achievement of outcomes by:

    - Requesting evaluation of all outputs.
    - Ensuring there are sufficient resources in the Research and Evaluation Team.
    - Championing the internal guide *Monitoring and Evaluation 101.*

3. Cost Pressures

Findings

q. Increases in costs since establishment are largely due to increased operations and the modernisation programme.

Costs have increased by $51.5m (60%) over the seven years since the establishment of WorkSafe from $85.2m in 2014/15 (the first full year of operations) to $136.7m in 2020/21. The increase is largely due to ACC-WorkSafe projects, the modernisation programme and Whakaari as summarised below:

	$millions
Total operating expenditure in 2014/15	**$85.2**
Plus cost increases due to:	
ACC-WorkSafe projects (funded from ACC levy)	18.5
Modernisation programme + increased resources in Inspectorate and Legal (funded in Budget 2019)	17.3
Inflation (largely funded through Budget 2017)	7.8
Whakaari (funded in Budgets 2020 & 2021)	5.7
Other	2.2
Total cost increases	**$51.5**

= Total operating expenditure in 2020/21	**$136.7**

r. **There may be opportunities to realise cost savings through more focused cost management.**

Analysis of data provided by WorkSafe identified a number of areas which warrant further investigation. These include Corporate Costs, Wage Rates and Contractors and Consultants.

s. **Financial forecasting is minimal and seemed to be prepared in isolation or without input from operational staff.**

WorkSafe should be able to provide detailed revenue and expenditure forecasts over the next 10 years which include inflation, approved funding changes, planned business changes and other cost pressures. These should be regularly updated with inputs from all parts of the organisation so that management, the Board and MBIE have an up-to-date version that all parties can review.

We were provided with a forecast which included wage inflation for the first four years and no other changes other than the cessation of Whakaari and COVID-19 work. We were advised this showed that WorkSafe was financially sustainable, but this view did not align with the Executive Leadership Team and Chief Executive's view, who have consistently advised us that WorkSafe is underfunded.

t. **Cost pressures over the next 10 years are estimated to total $200.1m, of which $123.1m are possible 2022 Budget Bids which have yet to be considered by MBIE or Treasury.**

In the absence of a robust forecast from WorkSafe, we developed an estimate of cost pressures based on documents and advice which we collated during the review. The estimate totals $200.1m over 10 years, as summarised below:

	$millions
Market Activity	2.4
Wage & Price Inflation	27.2
Regulatory Reform Programme (Plant & Structures)	68.8
Other Regulatory Changes (Confidentiality , Covid-19, Confidentiality	101.7
Modernisation Programme	unknown
= Estimated Cost Pressures over next 10 years	**$200.1m**

u. **Lack of a clear inputs-outputs-outcomes framework makes it difficult to confirm the extent to which cost pressures can be funded internally or possible trade-offs can be identified.**

Some cost pressures such as the proposed Plant and Structures and COVID-19 budget bids clearly align with WorkSafe's regulatory role and Government priorities. Links could also be drawn to other business-as-usual cost pressures. However, the lack of a clear inputs-outputs-outcomes framework makes it difficult to confirm whether these cost pressures can be funded internally, or to identify possible trade-offs.

It is therefore not possible to comment on whether the cost pressures will impact on WorkSafe's achievement of outcomes, or the extent to which resources can be shifted to address cost pressures without compromising outcomes.

Recommendations

It is recommended that WorkSafe:

16. Investigates opportunities to realise cost savings by analysing:

   - Corporate Functions - whether the costs and level of resources in corporate areas are appropriate for the size of the organisation

   - Wage Rates – what is driving the wage premium and whether new recruits are entering the organisation at or above 100% of their respective remuneration bands

   - Contractors and Consultants – whether contractors and consultants are providing value for money relative to employing permanent or fixed-term FTEs.

17. Develops and maintains detailed revenue and expenditure forecasts for the next 10 years which include inflation, approved funding changes, planned business changes and other cost pressures. The cost pressures outlined in this paper should be reviewed and included in the 10-year forecast as appropriate.

18. Aligns updated cost pressures to its role, strategy and government priorities using the inputs-outputs-outcomes model recommended in recommendation 14.

4. Funding

Findings

v. Ongoing budget bids are likely given the way WorkSafe manages its cost pressures and how its core regulatory activities are funded.

WorkSafe has a two-step strategy to manage cost pressures which includes meeting inflationary cost pressures by realising efficiencies, and funding regulatory and other changes through budget bids. This strategy results in repeated budget bids because WorkSafe is unable to manage cost pressures by realising efficiencies due to the absence of a clear framework to guide resource allocation decisions.

In addition, while WorkSafe's core regulatory activities are largely driven by labour market activity, it is funded through appropriations which are fixed, with no direct link to levy revenue. Although core regulatory activities may not be directly linked to levels of labour market activity, it is expected there will be some positive correlation. This means that WorkSafe will need to periodically request appropriation increases if its regulatory activity is to keep pace with a growing labour market.

w. ACC funding arrangements appear to be an issue for both WorkSafe and ACC. WorkSafe should concentrate on making the existing arrangements work.

The requirements for injury prevention measures undertaken by WorkSafe and partly or wholly funded by ACC are clearly set out in section 264B[12]. There is currently no intention to change this legislation. Given that ACC funding is a significant portion of WorkSafe revenue[13] and current requirements are set in legislation, our view is that WorkSafe should concentrate on making the existing arrangements work, including meeting the evaluation and rate of return requirements agreed with ACC as set out in the Act.

Recommendations

It is recommended that WorkSafe:

19. Reviews its two-step strategy to manage cost pressures with a view to reducing the reliance on budget bids to fund business growth and new initiatives.

20. Focuses its efforts in relation to ACC-funded programmes on making the existing arrangements work as set out in section 264B of the Accident Compensation Act 2001, including meeting the evaluation and rate of return requirements agreed with ACC.

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[12] ACC funding is provided to WorkSafe under section 264B of the Accident Compensation Act 2001 to implement injury prevention measures as agreed in the workplace injury prevention action plan

[13] $19.2m or 13% of WorkSafe's total revenue in 2020/21

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WorkSafe's Response to Recommendations

1. Role, Strategy and Govt Priorities

SageBush Recommendation	WorkSafe Response
1. Formally links each of the sixteen regulatory functions set out in section 10 of the WorkSafe New Zealand Act 2013 to business groups and activities to provide assurance that all sixteen functions are covered, the extent of the coverage, and if there are any gaps.	• All functions are covered, but we will produce a schematic to demonstrate this in our future Statement of Intent.
2. Takes time to reflect on its first seven years as New Zealand's primary health and safety regulator to develop a clear and concise strategy that is compelling, specific and outcomes focused. The strategy needs to be widely accepted and easily understood to galvanise the commitment of many parties to deliver the step-change needed to improve health and safety outcomes. This should be followed by a review of key accountability and internal documents to ensure they tell the WorkSafe story clearly and simply and are consistent with each other and agreed messaging.	• The strategy is already developed and reflected in our Statement of Intent, and steps already taken to communicate and engage with stakeholders e.g., Te Kāhu Mātai. • However, WorkSafe acknowledges that we need to do more to tell our story to stakeholders and advance our peoples' understanding of our strategy and direction.
3. Fully scopes the implications of its recent work-related harm research on its strategy, priorities, and resourcing. It should use the strategy review process recommended above to identify and confirm the trade-offs, choices and priorities needed to position itself in terms of outcomes it can realistically achieve.	• This is a normal part of the way we operate as a modern regulator; making informed decisions and choices on the effective approaches to achieve our outcomes and impacts. • However, we acknowledge that some areas such as regulatory effectiveness evaluation needs more investment to inform the decision making on regulatory choices.
4. Develops a clear description of the mix of activities it uses to deliver its regulatory role and how these activities contribute to the achievement of its outcomes.	• Our Statement of Intent Outcomes Framework reflects the six core regulatory activities to deliver on regulatory impacts and outcomes. Work is underway to be more transparent on our outputs and output performance measures. • Increased investment in regulatory effectiveness evaluation will enable us to assess how activities contribute to the achievement of outcomes and impacts.
5. Continually reinforces in its engagements and communications that accountability for work-related health and safety sits with businesses and other duty holders and that WorkSafe's role	• This is a normal part of the way we operate as a modern regulator.

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as regulator is to monitor and support these parties to meet their responsibilities.	• Our legislation requires this to be done and we perform this as business-as-usual.
6. Fully utilises the efforts and resources of other parties to achieve outcomes that WorkSafe cannot deliver by itself alone.	• Fundamental in our enterprise operating model is working with and through others. This is a normal part of the way we operate as a modern regulator. The "Way Forward" demonstrates several examples of this in action.
7. Reviews its supply chain and/or upstream approach from a strategic choice perspective and closely monitors the effectiveness of this approach.	• This will be normal part of the way we operate as a modern regulator and is a strategic priority of the organisation. • Fundamental in our enterprise operating model is evaluating the effectiveness of our regulatory interventions. We acknowledge that further investment is required in regulatory effectiveness evaluation.
8. Takes a highly targeted approach to allocating its resources to support PCBUs and duty holders in addressing mentally healthy work issues in workplaces. This will enable WorkSafe to be clear about the outcomes it can realistically achieve and to minimise fragmentation across other agencies that have mental health responsibilities.	• This is a normal part of the way we operate as a modern regulator, risk-based, targeted interventions. Health is one of our three priority outcomes, and this includes mental health in the workplace.
9. Clearly identifies the activities it is undertaking to support Government's Health and Safety at Work Strategy 2018-2028 so progress can be followed by external stakeholders, the Minister and MBIE.	• Our approach is fully aligned with the Government's Health and Safety at Work Strategy 2018-2028, and we plan to be transparent about the progress we are making. • This is discussed further in the "WorkSafe-Way Forward".
10. Develops a clear definition of 'regulatory risk' and uses this to communicate and mitigate risks to the performance of the health and safety system.	• Our whole approach as a responsive regulator is risk-based, and focused on effective performance of the system. • Our focus on regulatory effectiveness addresses the risk of failure at system level and then makes targeted interventions that will effectively achieve outcomes and impacts. • At a function level we also have a regulatory risk profile to understand and inform regulatory decision-making and practices within the organisation.
11. Considers what further action should be taken in respect of the three risks identified in Key Finding (k) – that is *Keeping regulatory tools and legislative instruments up to date*, *Processing authorisations*, and *Responses to fatigue in the road freight transport industry*.	• Our really responsive approach to regulation means that our tools are up to date with proven modern approaches. • However, sometimes funding needs to be diverted to areas where they are more effective in advancing our outcomes and impacts. Further funding to enable the implementation of fit for purpose legislative

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SageBush Recommendation	WorkSafe Response
	instruments and maintain our currency of regulatory guidance is required.
12. Reconsiders its view that it is not funded for activities in the transport sector.	• Fundamental in our enterprise operating model is working with and through others. This is especially relevant in the transport sector where there are multiple agencies with a safety role. Achieving an impact on outcomes is a system level challenge involving all agencies working together. How we fund this work will follow from this important mahi.

2. WorkSafe's Performance

SageBush Recommendation	WorkSafe Response
13. Develops workflow process models which use activity data (e.g., notifications, assessments, investigations, prosecutions) and other insights to identify the impacts on work demand and use these to measure and manage its resources.	• Our Digital Transformation programme will develop workflow models that will enable us to gain from our data better insights on work demand and resource allocation. This is a fundamental part of our enterprise operating model.
14. Develops a clear framework to assess the value of activities and guide resource allocation decisions. This should include four key elements: • Clear linking of inputs-outputs-outcomes. • Output costing (in FTEs & $$$s). • Activity measurement and monitoring. • Assessment of benefits of each activity.	• Our Statement of Intent Outcomes Framework reflects the six core regulatory activities. Work is underway to be more transparent on our outputs and output performance measures. • Increased investment in regulatory effectiveness evaluation will enable us to better assess how activities contribute to the achievement of outcomes and impacts.
15. Increases the focus on evaluation of outputs to guide the allocation of resources and support the achievement of outcomes by: • Requesting evaluation of all outputs. • Ensuring there are sufficient resources in the Research and Evaluation Team. • Championing the internal guide *Monitoring and Evaluation 101*	• Work is underway on regulatory effectiveness evaluation.

3. Cost Pressures

SageBush Recommendation	WorkSafe Response
16. Investigates opportunities to realise cost savings by analysing: • Corporate Functions - whether the costs and level of resources in corporate areas	• Our future investment in regulatory effectiveness evaluation will include a value-for-money assessment. Insights from this will enable us to make further investments in initiatives that advance our outcomes and impacts.

	• At an input level we use our budget, procurement, planning, remuneration and performance business processes to drive efficiency and economy.
are appropriate for the size of the organisation • Wage Rates – what is driving the wage premium and whether new recruits are entering the organisation at or above 100% of their respective remuneration bands • Contractors and Consultants – whether contractors and consultants are providing value for money relative to employing permanent or fixed-term FTEs.	
17. Develops and maintains detailed revenue and expenditure forecasts for the next 10 years which include inflation, approved funding changes, planned business changes and other cost pressures. The cost pressures outlined in this paper should be reviewed and included in the 10-year forecast as appropriate.	• WorkSafe is working on strengthen its strategic finance capability which will include that for better forecasting and modelling.
18. Aligns updated cost pressures to its role, strategy and government priorities using the inputs-outputs-outcomes model recommended in recommendation 14.	• WorkSafe is working on strengthen its strategic finance capability which will address this recommendation. • Our outcomes framework now enables us to make more relevant and targeted choices for activities, inputs, and costs to achieve outcomes.

4. Funding

SageBush Recommendation	WorkSafe Response
19. Reviews its two-step strategy to manage cost pressures with a view to reducing the reliance on budget bids to fund business growth and new initiatives.	• WorkSafe is working on strengthen its strategic finance capability and regulatory effectiveness evaluation to demonstrate the value of further investment in achieving our outcomes and impacts. This report highlights that further investment is required.
20. Focuses its efforts in relation to ACC-funded programmes on making the existing arrangements work as set out in section 264B of the Accident Compensation Act 2001, including meeting the evaluation and rate of return requirements agreed with ACC.	• Our outcomes framework now enables us to make more relevant and targeted choices for activities, inputs, and costs. • Confidentiality

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Background

Introduction

In July 2013, the Government released the *Working Safer*[14] document which contained its response to the recommendations of the Royal Commission on the Pike River Coal Mine Tragedy (October 2012) and the Report of the Independent Taskforce on Workplace Health and Safety (April 2013).

WorkSafe was formed in December 2013, with a legislative mandate established under the WorkSafe New Zealand Act 2013. *Working Safer* set expectations for health and safety outcomes and provided a blueprint for strategy and action.

Since 2013, the government has made significant new investment into the work health and safety regulatory system. This has included funding support to:

- Build the major hazard facilities activity

- Support the Canterbury rebuild

- Build the *Working Safer* functions, including Operational policy and practice, Work related health, Hazardous substances, Injury prevention programmes, Technical services, Guidance.

Before WorkSafe was established, $42.281 million was appropriated to Health and Safety Services for the Department of Labour (2011/12). WorkSafe funding in its first full financial year was $87.061 million (2013/14) and is $111.595 million currently (2020/21). In parallel, since inception, WorkSafe has recorded progress against a number of system targets including work-place fatalities and serious injuries.

A Value for Money review[15] was completed in 2015 which indicated alignment between WorkSafe activities and the *Working Safer* blueprint, the need to firmly move out of WorkSafe's establishment phase in 2016, and a conscious effort being made to address the quantum of its corporate costs.

WorkSafe commenced its modernisation programme in 2019 to develop its capabilities and capacity as a modern, insights-led health and safety regulator. This programme includes building internal Information Technology capability and progressively transferring its Information Technology systems from MBIE to WorkSafe.

WorkSafe had indicated that it continues to face a mix of cost pressures and regulatory risks outlined in the 2019 Briefing to the Incoming Minster. These include costs for addressing significant events such as the Whakaari/White Island investigation, developing capabilities

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[14] [Working Safer: A blueprint for health & safety at work, August 2013 (mbie.govt.nz)](), August 2013

[15] *WorkSafe New Zealand: Targeted Independent Review*, Doug Martin, 18 December 2015

such as its energy safety function, and digital transformation cost pressures as it continues its modernisation programme.

Context for Review

The 2021 WorkSafe Strategic Baseline Review was initiated by MBIE to better understand how WorkSafe is deploying its available resources, and the choices that the organisation and Ministers face.

WorkSafe had indicated that it continues to face a mix of cost pressures. These include costs for addressing significant events such as the Whakaari/White Island investigation, developing capabilities such as its Energy safety function, and digital transformation cost pressures as it continues its modernisation programme.

MBIE has therefore commissioned this WorkSafe Strategic Baseline Review. The review will provide an assurance around WorkSafe's management of resources, insights to further inform WorkSafe's planning, and support MBIE in its advice to Ministers on funding needs.

Methodology

The review has been guided by a framework comprising:

1. WorkSafe New Zealand Act 2013 – established WorkSafe, sets out its objectives and its sixteen functions.

2. Health and Safety at Work Act 2015 – provides for a balanced framework to secure the health and safety of workers and workplaces, and mandates WorkSafe as the Regulator.

3. WorkSafe Regulatory Systems Framework - a description of what WorkSafe does and how this meets its legislative mandate.

4. Inputs-outputs-outcomes Model[16] – to assess how well WorkSafe is performing, how efficiently it is using its resources and the value-add of its outputs.

5. Best Practice – assess WorkSafe strategy, procedures and practices by referring to the principles and expectations of best practice regulation identified by NZ Treasury[17].

The review has followed a structured process to identify the insights and findings outlined in this report. These are based on:

- Interviews and workshops with key stakeholders.

- Consideration of New Zealand's Health and Safety System and WorkSafe's role and function as set out in key legislation (e.g. Health and Safety at Work Act 2015, WorkSafe New Zealand Act 2013, Hazardous Substances and New Organisms Act 1996, and others).

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[16] *Source: UK Public Sector Efficiency Group*

[17] *Best Practice Regulation: Principles and Assessments*, NZ Treasury, Feb 2015 and *Government Expectations for Good Regulatory Practice* Sept 2015

- Review of external accountability documents (e.g. Annual Reports, Statements of Intent and Statements of Performance Expectations for WorkSafe and other regulatory agencies).

- External literature review.

- Review of WorkSafe internal documents.

- Analysis of activity levels, performance reporting, personnel and financial data – actuals, trends and targets over the eight years since establishment.

Interviews

Structured interviews were undertaken with the following stakeholders to understand the WorkSafe business, its performance, issues and challenges:

- The Minister for Workplace Relations and Safety

- The Chair and Deputy Chair of WorkSafe

- The Chief Executive and Executive Leadership Team of WorkSafe

- Other WorkSafe managers and a cross-section of WorkSafe staff

- MBIE representatives

- External stakeholders including representatives from Health and Safety Association of New Zealand; New Zealand Council of Trade Unions – Te Kauau Kaimahi; Business Leaders' Health & Safety Forum; Accident Compensation Corporation; BusinessNZ; Ia Ara Aotearoa Transporting New Zealand; and the Australian New Zealand Society of Occupational Medicine.

Interviewees and representative organisations are listed in Appendix 16.

Analysis

Analysis was undertaken as follows:

- *Performance management frameworks* – activity levels and performance measures were analysed against system and WorkSafe targets, and trends over the eight years since establishment were identified.

- *Personnel and costs* – the composition, structure and cost of WorkSafe's workforce, and how this has changed over time were analysed.

- *Assessing efficiency and effectiveness* – we had intended to use an inputs-outputs-outcomes framework to assess how changes in inputs over the eight years since establishment have affected outputs and outcomes. However, as noted in this report, this has not been possible because WorkSafe does not have the key components in place to assess activities or guide resource allocation decisions.

- *Funding Options and strategic choices* – we identified potential funding gaps over the next 10 years. Until an inputs-outputs-outcomes framework is developed, it is difficult to assess strategic choices for new or reprioritised investment. While it will be possible to assess the *quantum* of funding required for new activities (such as implementation of the Plant and Structure policy changes), it is difficult to assess the *relative priority* and therefore the *strategic choices and trade-offs* of different funding options.

Scope

In Scope

- Role as Health and Safety regulator.
- Delivery on Health and Safety at Work Strategy 2018-2028 Strategy and Government priorities.
- Regulatory activity.
- Organisational performance.
- Financial management, changes in costs and cost pressures.
- Funding levels.

Out of Scope

- Evaluation of the impact of the Health and Safety at Work (HSW) regulatory reforms more generally on HSW outcomes in New Zealand.
- Regulatory policy.
- Evaluation of WorkSafe's modernisation programme or target operating model.
- Organisational structure.
- Assessment of funding mechanisms (e.g. appropriateness or form of the levy regime).

Limitations of Information

This review has been limited by the information provided as set out below:

Limitations of information provided	This limitation makes it difficult to assess:
Resources (people and funding) used by regulatory activities or outputs are not measured.	- Resourcing and cost of activities. - Resourcing/funding gaps. - Identify or assess possible resourcing or funding trade-offs.
No inputs-outputs-outcomes framework.	- Impact of activities. - Efficiency of resource allocation. - Identify or assess possible resourcing or funding trade-offs. - Sustainable funding levels.
No clear framework or tools to assess the value of activities.	- Benefit and value for money of existing and proposed activities. - Relative priority of existing and proposed activities. - Effectiveness of resource allocation.

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Limitations of information provided	This limitation makes it difficult to assess:
	• Identify or assess options to reprioritise activities.
Operating model is at a high level which describes *how* WorkSafe will operate but not *what* it will do.	• What WorkSafe does (activities). • Resourcing and cost of regulatory activity. • Whether WorkSafe is meeting its statutory responsibilities.
Links between legislative functions and activities are not identified.	• Whether WorkSafe is delivering the 16 functions set out in section 10, WorkSafe Act 2013. • Appropriateness of resources allocated to regulatory activities.

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1. Role, Strategy and Govt Priorities

This section focusses on the question '*Does WorkSafe's mix of activities best deliver on its role, strategy and government priorities?*'.

Role of WorkSafe

Clarity of Role, Strategy and Priorities

This review required us to understand and assess how WorkSafe delivers on its role, strategy, and government priorities. We expected WorkSafe to be able to provide us with a clear description of its role, what it does to deliver on its regulatory responsibilities, and how its activities link to its legislative functions. We were provided with numerous documents which lacked clarity, presented different information and in some cases required piecing together to develop the overall picture.

We were directed to a number of accountability documents including the Statement of Intent, Statement of Performance Expectations and Annual Reports. The way these documents are structured and written is complicated and does not clearly describe how its activities, outputs and outcomes fit together. This is mainly due to the Outcomes Framework, WorkSafe targets, priorities, and plans being published across two different documents (2021/22 Statement of Intent and Statement of Performance Expectations), these documents being long and overly complicated, and the absence of a clear regulatory model. In addition, the Outcomes Framework is represented by at least three different diagrams within the same document, and WorkSafe's story and performance measures have changed a number of times in recent years.

We were provided with *How We Regulate*, an internal Operational Policy document dated August 2021 which is intended to set out how WorkSafe regulates the health and safety system and the energy safety system (refer Appendix 4). We do not consider that the *How We Regulate* document adequately describes WorkSafe's Regulatory Model and what it does to deliver its regulatory responsibilities. The document provides a high-level description of **how** WorkSafe will go about exercising its regulatory functions but not **what** it will do in terms of regulatory activities.

We were provided with the Enterprise Target Operating Model (eTOM) (refer Appendix 4) and the supporting Target Operating Model document (little TOM). We expected these documents to describe or outline WorkSafe's:

- **Business model** – which focuses on the external service offering and how it is delivered and experienced. This would include descriptions of key activities, how these activities deliver WorkSafe's regulatory functions, resources required for each activity and where activities are undertaken in the organisation;

- **High level operational design** – which articulates the business capabilities needed to deliver external services, including but not limited to how these are structured, staffed, and enabled by processes and technology; and

- **Roadmap** – which provides a multi-year view of the changes needed, including the priority and sequence of operational investments, including investments in change.

The eTOM we sighted takes a similar approach to *How We Regulate* – it provides high level behavioural descriptions of **how** WorkSafe will operate, but nothing about **what** activities it will do to deliver its regulatory functions or the resources or mechanisms it will use. We note and agree that WorkSafe will use these activities in different ways depending on the risk or issue it is facing and to be absolutely definitive is not possible. We also note that WorkSafe is developing new approaches to its monitoring of the health and safety system on its journey to become a *Really Responsive Regulator* and we support evolving its approach to be a more effective regulator. However, while WorkSafe describes itself as being in state of transition, we did expect it to be able to describe the way it currently operates in an easy to follow and more integrated manner.

We were also provided with a link to the *Taura Here Waka* video[18] and advised that together with *eTOM*, this would provide us with an understanding of WorkSafe's regulatory approach. *Taura Here Waka* conceptualises how the various parts of WorkSafe should work together to be effective, and deliver a stronger, unified organisation. We strongly support the need for WorkSafe to operate as a single, integrated organisation. However, in its current form, *Taura Here Waka* does not describe WorkSafe's regulatory role, functions, or how it operates.

Very late in the review[19] we were eventually provided with a paper: *Work Health and Safety Regulatory Framework – How WorkSafe decides which tool to use*[20]. This was the first and only document we received which comprehensively explained WorkSafe and how it operates. It is notable that the document had been developed as an internal resource for the Regulatory Frameworks Team and does not appear to have visibility in other areas of the organisation or with senior management.

In the absence of a clear description of WorkSafe's role, strategies and government priorities, we spent considerable time reviewing legislation, previous reviews and other core documents to gain an understanding of the organisation. Our experience is not unique - we were advised by a number of external stakeholders that the market is confused about WorkSafe's role and strategy. This leaves WorkSafe vulnerable to criticism at times when its social licence is being tested or it is moving into areas which may not be always understood as being within its mandate, such as psychosocial harm. In addition, it makes it difficult for other parties to support the wide range of initiatives that are needed to improve health and safety outcomes and which WorkSafe cannot undertake or fund by themselves. Difficulty in accessing and understanding this fundamental information damages WorkSafe's credibility.

We recommend that WorkSafe takes time to reflect on its first seven years as New Zealand's primary health and safety regulator, and then develops a strategy that is clear and concise about what it does and why, and its priorities.

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[18] *Taura Here Waka* does not exist as a document

[19] 7th October, which was five months into the review.

[20] *Work Health and Safety Regulatory Framework – How WorkSafe decides which tool to use - Regulatory Frameworks Team Resource*, dated 10 November 2020

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Understanding WorkSafe's Role

As a starting point to understanding WorkSafe's role, it is useful to consider the following high level, plain language description which was provided by WorkSafe:

WorkSafe is New Zealand's primary work health and safety regulator. It was established in 2013 through the WorkSafe New Zealand Act 2013. Its main objective under legislation is to 'promote and contribute to a balanced framework for securing the health and safety of workers and workplaces'. Its secondary objective is to 'promote and contribute to the safe supply and use of electricity and gas in New Zealand'.

WorkSafe is a Crown Agent and operates under the legislative framework set by the Crown Entities Act 2004. This sets parameters for how it is governed; how it exercises powers and duties under law; and its accountabilities to its Board, Minister and Government. MBIE monitors its performance against agreed targets, as well as its overall compliance with the Crown Entities Act 2004.

Like all Crown Agents, WorkSafe has specific responsibilities under Te Tiriti o Waitangi and an obligation to deliver equity for workers that experience higher rates of harm – including Māori, Pacific peoples and vulnerable worker groups. Structural factors, including institutionalised racism, can contribute to differences in outcomes as much as workplace practice and policy settings do.

WorkSafe's vision is that everyone who goes to work comes home healthy and safe; and its role is to use its regulatory levers to ensure businesses and organisations support this to happen. It is not responsible for how organisations manage health and safety, but it does have responsibility for influencing duty holders to ensure work is done safely. It uses a mixture of enforcement, engagement and education interventions to achieve this influence. The exact mix of interventions will depend on the situation. Its functions – how WorkSafe gives effect to its regulatory role – are set out in section 10 of the WorkSafe New Zealand Act 2013.

The Health and Safety at Work Act 2015 is New Zealand's health and safety legislation. WorkSafe is the primary regulator and holds a range of unique functions under this legislation. Some Crown agencies can also have functions under this legislation (e.g. Maritime NZ and on-water accidents). WorkSafe does not design or maintain the legislation - this is the role of MBIE – but it does provide advice on how it can be strengthened or improved to support effective regulatory practice.

The description is well packaged and highlights the broad scope of WorkSafe's responsibilities. However, as noted above, little detail on its functions, duties and how it operates was provided, or is readily available. To fill in these gaps, we reviewed and documented WorkSafe's roles and responsibilities under the WorkSafe New Zealand Act (2013), the Health and Safety at Work Act (2015) and other acts (refer Appendix 1). We then developed diagrams which summarise WorkSafe's regulatory role and functions, and interactions across the Health and Safety system based on legislation (refer Appendix 3).

A key point to note is that under legislation the primary responsibility for workplace health and safety lies with the PCBU. One of WorkSafe's roles as regulator is to monitor and support PCBUs to meet their responsibilities and comply with their obligations under the Health and

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Safety at Work Act. Very little of the documentation we sighted referred to PCBUs, nor did PCBUs or duty holders feature as we had expected in our discussions with WorkSafe.

When we raised this issue with WorkSafe, we were advised that they deliberately avoid using the term PCBU in public documents (because the acronym was not widely understood and causes confusion) and preferred the wider term 'duty holder' and the more user-friendly 'businesses and organisations'. While WorkSafe regarded the diagrams we developed for the purposes of this review in Appendix 3 as technically correct in that they described the functions and powers under law, they considered them misleading because they did not convey the range of actors and different roles in the health and safety system or the context for the legislation set out in the reports which gave rise to its establishment. WorkSafe referred us to the Health and Safety System diagram in the Report of the Report of the Independent Taskforce on Workplace Health & Safety[21].

We acknowledge there are more actors than just PCBUs, workers and WorkSafe, and that PCBUs are one (important) duty holder and that the 'primary duty of care' is one specific duty in the Act. Notwithstanding this, our view is that in its dialogue or communications WorkSafe should put more emphasis on continually reinforcing that businesses have accountability for workplace health and safety. In the absence of this focus there is a risk of public and business operators not taking their duty of care seriously, and considering the likelihood of WorkSafe taking enforcement action as being low. This issue was raised in a number of stakeholder interviews.

Breadth of Role

WorkSafe has a broad role and range of responsibilities under legislation. In addition, throughout its Statement of Performance Expectations and Statement of Intent, WorkSafe outlines how it will undertake its activities. The statements are high level and include:

- Kaimahi engagement, participation and representation will continue to be at the forefront of our work.

- Equitable outcomes will be achieved by renewing our focus on partnering with Māori to support meeting their aspirations for health and safety for Māori workers, engaging with iwi through our Te Ara Tuituinga engagement framework, and meeting our responsibilities under Te Tiriti o Waitangi.

- We will continue our focus on improving outcomes for Pacific Peoples through initiatives like Puataunofo (Come Home Safely) and through our Pacific People's Responsiveness Advisory Group.

- Work with professional bodies to increase knowledge of occupational health and safety.

- Work with sector leadership groups and tripartite (unions, employers and government working together) ways of working.

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[21] The Report of the Independent Taskforce on Workplace Health & Safety, April 2013, page 44.

These activities further broaden WorkSafe's role, providing flexibility in how it might use its resources and regulatory tools, but also adding complexity to how it operates and the interventions it takes.

Feedback from external stakeholders was that they recognised WorkSafe's broad mandate and would like to be more involved in supporting and participating in improving outcomes. A number of external stakeholders commented that WorkSafe could better utilise the resources of associated external organisations to support it to achieve improved health and safety outcomes. One stakeholder commented that it was time for WorkSafe to move away from broad concepts to being clear about what it can and cannot do.

Our view is that given its broad role and limited resources, WorkSafe needs to focus its efforts on those areas in which it has the greatest impact and on those activities for which WorkSafe has primary responsibility. This includes, as the primary[22] party in the health and safety system who can intervene and hold PCBUs or duty holders to account, using its enforcement powers to bring about the sort of behavioural changes WorkSafe wants to see in specific sectors. In addition, we would encourage WorkSafe to collaborate in new ways to better utilise the skills, expertise and reach of other parties to achieve outcomes that WorkSafe cannot deliver by itself alone.

Regulatory Strategies

Really Responsive Regulator

A key internal strategy for WorkSafe is to become a *really responsive[23], data-driven, insights-led regulator* in accordance with world best-practice. WorkSafe describes itself as operating under 'a mixed model approach aligned to a really responsive risk-based framework' which is defined as[24]:

- *A mixed model approach means using the best intervention or regulatory strategy to manage a risk or make the most of an opportunity.*

- *Applying really responsive risk-based regulation means we are responsive to the system in which we operate, and we focus primarily on risk within our health and safety system.*

- *Being really responsive means when we plan interventions, we consider:*
  – our regulated community's behaviours and attitudes toward health and safety
  – our constraints as a regulator

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[22] There are specific references to private prosecutions in the Health and Safety at Work Act 2015 and Health and Safety Representatives (HSRs) also have some mechanisms for holding PCBUs to account for their responsibilities

[23] *Really Responsive Regulation*, Robert Baldwin and Julia Black, LSE Law (2007) hjah (lse.ac.uk)

[24] *How We Regulate* - WorkSafe Operational Policy document (August 2021), refer Appendix 3

– *how well we're managing our regulatory risks*

– *how our health and safety system is changing over time.*

- *We use risk-based analysis to assess our health and safety system's performance, identify and prioritise risks, allocate resources, and make effective decisions.*

This long-term vision describes WorkSafe's intention to use its broad range of regulatory tools to be an effective regulator. This includes making appropriate interventions in workplaces in response to regulatory failures.

Influencing Supply Chains

An example of WorkSafe implementing the *really responsive regulator* approach is its review into the heavy vehicle freight industry. This work began with a literature review undertaken by WorkSafe in 2019 (*Risk factors in the road freight transport industry*) published on its website. The Literature Review document noted[25]:

> *Work-related vehicle crashes are a major cause of work-related fatalities, injuries and risk to the safety and health of workers (and the public) both in New Zealand and internationally.*

And concluded that:

> *As the New Zealand economy grows……there will likely be an increase in the number of workers in this industry and an increase in exposure to risk.*

The Literature Review identified the top three risk factors as[26]:

- *Business and industry practices*

- *Fatigue*

- *Other road users.*

……noting that…..*business and industry practices (i.e. poor working conditions, in particular low pay rates, remuneration schemes, employment contracts, work pressures, time demands, safety cultures and the supply chain) have all been shown to be associated with increased harms for workers.*

WorkSafe then commissioned Mackie Research to undertake a project: *Managing vehicle-related risk from supply chain pressures,* which was completed on 15 July 2021[27]. Research focused on developing solutions in the wider supply chain to address vehicle-related harm,

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[25] Risk factors in the road freight transport industry – literature review, WorkSafe November 2019, page 3

[26] Ibid, page 45 - 46.

[27] WorkSafe report identifies steps for improving transport safety | WorkSafe

including commercial issues and low pay for truck drivers. The project involved extensive engagement with industry but noted that[28]:

> *Some issues were discussed heavily throughout the data collection, but no clear solution resulted…… Where this was the case, the researchers have recommended that further investigation be carried out.*

There is no clear outcome resulting from this research/investigation and there does not appear to be any planned interventions by WorkSafe to strengthen the incentives on PCBUs or duty holders in the road freight transport sector to take steps to reduce known risks associated with fatigue.

It appears that WorkSafe's view is that fatigue in the road freight transport sector is the result of commercial pressures and that prosecuting operators is not going to change any behaviours as operators are unable to influence commercial pressures. WorkSafe's preference is to try to influence those parties creating the commercial pressures that generate fatigue. Notwithstanding this, given that WorkSafe has been aware since at least 2019 of significant levels of harm occurring in the road freight sector as a result of fatigue, we were surprised no further intervention is planned.

There are two recommendations in the Mackie research report for WorkSafe as a regulatory agency – one is about clarification of government roles across transport-related agencies[29] and the second is about responsibilities across the supply chain[30] as set out below:

Recommendation 6 – Responsibility across the supply chain	Ownership: Regulatory agencies.
Further develop Health and Safety legislation and enforcement of it, with a specific focus on PCBU responsibility and regulatory enforcement throughout the supply chain, building on existing related initiatives and drawing on chain of responsibility frameworks present in other countries such as Australia. This research highlighted that organisations who endeavoured to adopt and prioritise chain of responsibility principles found themselves at a commercial disadvantage, highlighting a gap in the New Zealand system. Equally, efforts to campaign for improved supply chain regulations and a discontent over inadequate supply chain enforcement by participants suggest further investigation is required.	Impact: A greater focus on the upstream causes of harm in line with contemporary health and safety theory.

Table 1: Mackie research report Recommendation 6 [31]

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[28] Managing vehicle-related risks from supply chain pressures, Mackie Research, 5 March 2021, page xii.

[29] Ibid, page xiv

[30] Ibid, page xv.

[31] Ibid, page xv.

In line with this recommendation, WorkSafe advised that it is starting to consider broader issues that impact on workplace health and safety in the supply chain. These include reducing pressure from Boards (over and above those who have control of the workplace) and investors[32] to maximise returns which may put pressure on PCBUs further down the supply chain to cut corners on health and safety.

We were advised by WorkSafe that it had the social licence to do more upstream activities conferred through a) its functions set out in the WorkSafe Act and the relevant sections of HSWA enabling upstream activity and b) support from key stakeholders, including the Minister for Workplace Relations and Safety, whose Ministerial priorities work programme includes an upstream intervention in the construction sector.

It is beyond the scope of this review to consider the extent to which taking an upstream or supply chain approach is an appropriate regulatory approach for WorkSafe. However, in the context of this review, the questions that an upstream or supply chain approach raise are about strategic choices:

- How much effort should WorkSafe put into supply chain issues when known areas of harm are not being addressed?

- Is the focus on supply chains the most effective use of WorkSafe's resources, particularly when there known gaps in resourcing (for example, in keeping regulatory tools and legislative instruments up to date)?

- To what extent should WorkSafe get involved in areas that do not primarily relate to health and safety issues (such as commercial issues or low pay)?

- How can WorkSafe gain the social licence it seeks for an upstream or supply chain approach without being able to demonstrate its effectiveness? This would include how this approach fits within a clear strategy, an evaluation of this approach, quantification of the resources that are already being/are proposed to be applied to supporting this approach, and any trade-offs such an approach requires.

We saw no indications that WorkSafe was considering these issues when taking steps to influence decisions up the supply chain.

Our view is that WorkSafe's upstream or supply chain approach should be clearer from a strategic choice perspective. That is, how does this approach fit within WorkSafe's strategy, has an evaluation of such an approach been completed, what is the level of resources that are already being/are proposed to be applied to supporting this approach, and what are the trade-offs that will be required. This would include closely monitoring changes that have occurred or are expected to occur for workers in the workplace as a result of adopting this approach.

As part of our discussions on supply chains in the transport sector, WorkSafe expressed a view that it is not funded for activities in the transport sector. We do not support this view given PCBUs conduct transport operations and control workplaces. It is appropriate that transport workplaces meet the health and safety responsibilities in the transport sector like any other

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[32] This includes pension funds who have shareholdings in supply chain businesses.

business. We recommend that WorkSafe and MBIE formally resolve the question of whether WorkSafe is funded for the transport sector.

Work-related health

WorkSafe initiated research has identified that work-related health harm is much more significant in terms of health and safety outcomes than acute harm from safety-related events. In recognition of this, the Government Health and Safety at Work Strategy 2018 to 2028 sets *better management of work-related health risks* as one of its priorities. WorkSafe was provided with additional funding in Budget 19 and the Health and Technical Services Group is increasing its response to this harm with a focus on more proactive leadership and management of work-related health risks[33].

WorkSafe is building its capacity and capability to deliver work-related health programmes. *Healthy Work - WorkSafe's Strategic Plan for Work-Related Health 2016 to 2026* details a series of strategic themes and focus areas of activity over the period of the Plan[34]. There are three focus areas for the current year:

- Carcinogens and airborne risk;
- Musculoskeletal disorders; and
- Mentally healthy work.

In relation to mentally healthy work, WorkSafe has been proactive in issuing a position statement on its website in which it identifies *three key concepts to help businesses and organisations begin to understand the broader reach of mentally heathy work*. These concepts are work design, work environment and relationships.

WorkSafe is taking a considered and deliberate approach to interventions in this area. Examples of recent interventions in psychosocial harm appear to have been effective in bringing about change without minimising the primary duty of care of relevant PCBUs. By way of example, WorkSafe conducted a workplace assessment when an issue of fatigue management at Wellington Free Ambulance was raised by ambulance staff. This intervention resulted in a change in rosters by the PCBU to mitigate the fatigue issues raised.

Mentally healthy work is about shifting attitudes similar to the changes which have been achieved around drink-driving and sun smart. Although resourcing was provided in Budget 19 to establish work-related health harm capability, as this area continues to evolve it is probable that additional resourcing will be needed by way of a Budget bid.

While external stakeholder feedback supported WorkSafe having a role in relation to mental health at work, they had reservations about whether health issues sat well within the culture of a safety organisation. They considered the term 'mentally healthy work' to be problematic, given this implied going beyond 'do no harm' to a premise where work should *improve* the

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[33] *Healthy Work – WorkSafe's Strategic Plan for Work-Related Health 2016 to 2026* - Foreword

[34] *Mentally Healthy Work* – WorkSafe website last updated 8 July 2021

mental health of workers. Their view was that while WorkSafe needed better connections with the health sector, they did not consider 'mentally healthy work' should become a big area for WorkSafe.

As work-related health harm is more significant in terms of health and safety outcomes than acute harm from safety-related events, we recommend that WorkSafe identifies the trade-offs and choices that it is making in these areas and makes these explicit. This is important to enable WorkSafe to be clear about the outcomes they can realistically achieve and to target its resources effectively.

Our view is that given 'mentally healthy work' has such a broad scope, WorkSafe should adopt a highly targeted approach to allocating its resources to support PCBUs and duty holders in considering mental health issues in places of work. WorkSafe will need to consider how it does this to minimise fragmentation across other agencies that have mental health responsibilities. This should include providing guidance and resources, and linking PCBUs and duty holders to those with health expertise.

Government Priorities

WorkSafe's strategy must consider the priorities set out in the Government's Health and Safety at Work Strategy 2018-2028. The Framework for Action sets two goals:

1. Focusing on what will make the biggest impact to reduce harm; and

2. Building everyone's capability to do this well.

and the following priorities:

- Work-related health including mental health.

- Business with greater need: sectors with highest harm and smaller businesses.

- Workers with greater need: Māori and other workers at greatest risk.

- Encouraging leaders all levels to integrate health and safety.

- Enabling workers to be represented, engaged and to participate.

- Lifting capability of health and safety practitioners.

- Developing and sharing better data and insights to improve decision making.

In response to questions about how WorkSafe is responding to the priorities set out in the strategy, WorkSafe listed some of the specific work it is progressing:

- The establishment of our Health and Technical Services Group and their mental health focus;

- WorkSafe's Maruiti and Puataunofo work, focussing on health and safety for Māori and Pacific Peoples;

- Support for industry groups to encourage improved health and safety performance at sector level;

- Development of capability and initiatives focussing on improved worker engagement, including the Toroawhi (Roving Health and Safety Representative) pilot; and

- Support for the Health and Safety Association of New Zealand (HASANZ) in relation to lifting the capability of health and safety practitioners.

While it is clear that a lot of activity is underway, it is not clear how this work will support the delivery of government priorities. This echoes the point raised previously around the need for a simple and clear description of how WorkSafe's role, strategies and government priorities fit together. We recommend WorkSafe be more targeted in its description of what it is doing to support Government's Health and Safety at Work Strategy 2018-2028 so WorkSafe's contribution can be followed by external stakeholders, the Minister and MBIE.

We note that WorkSafe has recently agreed with MBIE to a new approach to stakeholder engagement to support achievement of the Strategy's vision. This will take the form of a stakeholder led Action Leadership Council, proposed to create a new space at the centre of the health and safety system where representatives of workers, employers (both private and public), iwi, health and safety sector groups, experts, and investors be invited to come together and take ownership of system outcomes.

Delivering Core Regulatory Functions

To assess whether WorkSafe is delivering its core regulatory functions we expected to be able to link or map each of the sixteen functions set out in section 10 of the WorkSafe New Zealand Act 2013 to a WorkSafe activity and each WorkSafe activity to a business group. We were advised that this linking is not available, although the Modernisation team is in the process of assessing whether WorkSafe is meeting its wider legislative responsibilities and that this work may be useful.

We then attempted to prepare our own linking based on the information made available (refer Appendix 5). The Modernisation team subsequently confirmed our linking of legislative functions to business teams, but was not able to confirm the linking of legislative functions to activities.

However, during this exercise we gained a reasonable overview of WorkSafe's activities. This indicated that although it seems clear that all sixteen functions are covered, it was not possible to form a view on the extent of the coverage, or if there are any gaps.

We therefore could not identify which activities deliver which functions. Given this, we are unable to confirm the extent to which WorkSafe is delivering all of its core regulatory functions, or to assess the resources applied to each function. This information is unlikely to come from the Modernisation team, which is not focussing at an activity level. WorkSafe may want to consider widening the scope of the Modernisation team's work on legislative responsibilities to include activities supporting each of the legislative functions under WorkSafe New Zealand Act 2013 sec 10.

We also expected that WorkSafe would be able to identify the level of resources (FTEs and funding) used by each of its regulatory activities. What we found is that WorkSafe is able to identify the resources that are used by groups that match its organisational structure. However, WorkSafe is not able to identify the resources used by each of its regulatory activities when these do not align with its organisational structure or operate across the organisation. Among other things, this makes it difficult for WorkSafe to quantify funding needed to cover any gaps in functions or activities, other than seeking additional funding for discrete or new activities.

Regulatory Activities

Regulatory Framework

At the heart of any regulatory system is the regulatory framework set up by legislation (legislative instruments) and the associated non-legislative tools (supporting instruments e.g., education and influencing). A key factor in the performance of any regulatory system is the regulatory framework that underpins the system is kept up to date and maintained as a system asset.

WorkSafe's regulatory framework document[35] outlines some of WorkSafe's statutory functions and responsibilities relating to the Health and Safety system regulatory framework:

Among many other functions, section 10 of the WorkSafe New Zealand Act 2013 gives WorkSafe responsibility to:

− *advise on the operation of the work health and safety system, including co-ordination across the different components of the system*

− *make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes, and*

− *publish information about its approach to enforcing compliance with relevant health and safety legislation.*

This Act also states that WorkSafe is to:

− *develop codes of practice*

− *develop safe work instruments (SWIs)*

− *provide guidance, advice, and information to those who have duties under health and safety legislation and to the public.*

A key part of the regulatory framework is the regulatory tools and legislative instruments which enable the regulator to deliver its legislative functions. In April 2017 the New Zealand Government issued a document titled – *Government Expectations for Good Regulatory Practice*. The document states:

The government expects regulatory agencies to adopt a whole-of-system view and a proactive collaborative approach to the care of the regulatory system within which they work including responsibilities for:

• *monitoring, review and reporting on existing regulatory systems,*

• *robust analysis and implementation support for changes to regulatory systems, and*

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[35] *Work Health and Safety Regulatory Framework – How WorkSafe decides which tool to use.* Internal document dated 10 November 2020 - Page 4

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- *good regulatory practice.*

This is the regulatory real estate[36] being managed as a system asset and describes the regulatory stewardship role. In a paper on regulatory stewardship[37] Stephanie Winson noted:

> *An all-of-system view means understanding how all parts of a regulatory system work together and are performing …done well, it will require genuine collaboration between policy and regulatory agency leaders…will require individual agencies to commit resources more effectively to support stewardship endeavours.*

WorkSafe and MBIE have different roles in the health and safety regulatory system[38]. This includes a collective responsibility to work in ways that are appropriate to their roles to ensure, as far as is possible[39], that regulatory tools and legislative instruments are kept up to date from a stewardship perspective. This is necessary to maintain the effectiveness of the health and safety system.

WorkSafe's Regulatory Role

WorkSafe is responsible for the following regulatory tools:

- *safe work instruments (SWIs)*

- *class and individual exemptions to regulations under section 220 of Health and Safety at Work Act 2015*

- *incorporating standards by reference in SWIs*

- *guidance including Approved Codes of Practice (ACOPs), Good Practice Guidelines, Interpretive Guidelines, Quick Guides, Special Guides, Fact Sheets, Technical Bulletins*

- *referring to standards in ACOPs or guidance*

- *WorkSafe positions, policies and clarifications including operational policies and regulatory expectations, and*

- *education products and activities including public education[40].*

In 2014 the Productivity Commission released a report[41] that examined how the design and operation of regulatory regimes and their regulators can be improved. The Commission found that any regulatory system needs to have systematic and cost-effective approaches to keeping the stock of regulation up to date, so ensuring that outcomes are still achieved, and

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[36] For any regulator, this is its suite of regulations, standards, codes of practice, safe work instruments, guidance material

[37] *Regulatory Stewardship – Voice of the Regulator*, Policy Quarterly – Volume 13, Issue 4 – November 2017 – Page 3

[38] https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf

[39] given Ministers retain decision rights on policy and funding matters, it isn't within the power of WorkSafe or MBIE to ensure that the regulatory framework is kept up to date

[40] *Work Health and Safety Regulatory Framework – How WorkSafe decides which tool to use.* Internal document dated 10 November 2020 – Page 5

[41] Final Report Regulatory institutions and practices (productivity.govt.nz)

unnecessary or inefficient rules are removed. This is consistent with the regulatory real estate needing to be maintained (as a system asset) and also recognises unnecessary compliance costs can be imposed on business and consumers as a result of outdated, fragmented or not-fit-for-purpose regulations.

Agencies other than WorkSafe can regulate health and safety at work

Section 191 of HSWA enables the Prime Minister to designate an agency as a work health and safety regulator, having regard to the specialist knowledge of that agency. The designation must specify the scope of the designation:

- For a particular industry, sector or type of work or circumstance
- The functions or powers that the designated agency may exercise under HSWA.

WorkSafe is currently the work health and safety regulator for all sectors and industries, apart from the maritime and civil aviation sectors, where Maritime New Zealand and the Civil Aviation Authority have already been designated. The scope of the designations is designed collaboratively and have supporting Memorandums of Understanding so both agencies understand their roles.

Designations recognise the mutually reinforcing overlap between the objectives of the Health and Safety at Work Act 2015 and other regulatory systems, and that there are efficiency and effectiveness gains from having regulators think holistically about safety issues. It helps reduce the potential for gaps when there are two agencies working in the same space, with each thinking the other agency is taking responsibility.

Currently, WorkSafe, Waka Kotahi and the Police work together in their respective roles as the Health and Safety regulator, land transport regulator and enforcement officers – but there is scope to improve the land transport health and safety system. The deliberate overlap of the land transport safety regulatory system and the work health and safety regulatory system has created an unintended gap in the delivery of those regulatory systems, as no single agency has prioritised work health and safety in the land transport sector in their regulatory work programme.

MBIE and the Ministry of Transport are working with Waka Kotahi and WorkSafe to progress a proposed Health and Safety at Work Act designation for Waka Kotahi for the road and rail elements of the system.

Regulations

MBIE is responsible for managing and maintaining health and safety legislation and regulations. WorkSafe as regulator applies the regulations and has a responsibility to recommend changes to improve the effectiveness of the work health and safety system, including legislative changes[42]. There are currently 30 health and safety regulations (refer Appendix 6).

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[42] WorkSafe New Zealand Act (2013), sec 10(b).

When WorkSafe was established, outdated regulations were identified as a significant risk to the effective functioning of the health and safety system. External stakeholders we interviewed also commented on inappropriate regulations being a hindrance to PCBUs effectively meeting their obligations and that changes signaled were too slow in coming.

MBIE is managing a health and safety regulatory reform programme to bring the regulations up-to-date, and ensure they are clear, effective at reducing harm and targeted to critical risks (refer Appendix 15). The current focus of the regulatory reform programme is Plant and Structures.

WorkSafe provided a report that considered the potential cost implications of effectively introducing these reforms – *Regulatory Framework and Regulatory Approach: 10-year activity and cost pressure dated August 2021*. This report noted that to effectively implement the main policy changes for the new plant and structures regulations WorkSafe will require around $20 million for a programme of work which will include guidance, education, and engagement, enhancing technical expertise, building a registration function and the associated Information Technology build. In this report WorkSafe stated it will not be able to fund the substantive work required for implementation within baselines.

The Review Team was not able to reach a conclusion as to whether or not the funding requested for the introduction of the Plant and Structures regulatory reform programme was appropriate, given we had insufficient detail and supporting information. It is not yet possible to identify the current level of resources allocated to this activity. Given this is unclear, in the absence of more detail, it is not possible to assess whether the proposed budget bid of $20 million is justified.

We do, however, consider that regulatory reform is an ongoing and essential activity for which both WorkSafe and MBIE should be appropriately resourced. Consideration needs to be given to establishing a sustainable baseline that allows WorkSafe and MBIE to ensure a comprehensive and ongoing programme of regulatory reform is undertaken that includes all components of the regulation-making process including the introduction and implementation of the new regulations once agreed. WorkSafe (and MBIE) need to be resourced appropriately to ensure its regulations review programme can be maintained on an ongoing basis.

Authorisations

The regulations set out a range of authorisation regimes. An authorisation is intended to reduce the risks of particular activities, and without an authorisation the work, workplace, plant or substance is prohibited. Generally, authorisation regimes have been established where the intended activities involve a significant hazard to risk to the health and safety of workers and others in the workplace (refer Appendix 7).

There are two components to an authorisations regime:

- Controlling entry into a market for specific activities; and/or
- Providing a level of assurance that good health and safety management practices are in place.

Authorisation regimes impose obligations on the regulator to:

- Receive and review applications and consider the supporting evidence presented against the appropriate regulations and or policy/guidance;

- Assess the application; and

- Approve, decline or approve with additional conditions.

Some regimes use third party authorising agencies or certification bodies (e.g., adventure activities, pipelines, forklifts, powder actuated tools, pressure equipment, cranes, and passenger ropeways). This arrangement means that the regulator (WorkSafe) must have a system of oversight in place to ensure the third parties are fulfilling their regulatory role and also so it can be assured their performance meets regulatory requirements.

In a paper dated 22 December 2020 *Authorisation Process Review – Recommendations for Improvement* WorkSafe noted:

> *the current levels of Authorisations Officers are insufficient….to ensure timely processing of authorisations and meeting of regulatory requirements.*

Confidentiality

It is important to note that a failure by third party authorisers to undertake their regulatory function properly caused a recent major review of the regulatory performance of Waka Kotahi – New Zealand Transport Agency.

Safe Work Instruments

Safe Work instruments are a regulatory tool which prescribe detailed technical matters or standards, set workplace controls or stipulate requirements to support the effective operation of the health and safety regulatory framework. Safe Work instruments can only have legal effect if they are specifically referred to in relevant regulations and must be approved by the Minister.

WorkSafe is responsible for the development and maintenance of Safe Work Instruments involving regulated parties, workers and their representatives as required. They establish requirements that are enforceable by WorkSafe.

As this tool targets technical information and standards, Safe Work Instruments are designed be a low-cost tool to make amendments and changes within a short time frame.

There are currently 24 Safe Work Instruments in place (refer Appendix 8). We observed that 15 of the 24 Safe work instruments are dated 2017, a further three instruments were dated 2018 and six instruments dated 2019. It is unclear from WorkSafe's website when these

instruments will be updated, however we have been advised that a review programme is underway.

Guidance

Guidance is developed by WorkSafe and provides practical information for PCBUs on how to comply with duties in Health and Safety at Work Act 2015 and regulations. Guidance can vary from high-level advice to step-by-step instructions on good practice ways to comply with duties and includes[43]:

- Codes of Practice

- Good practice guidelines

- Interpretative guidelines

- Quick guides

- Fact sheets, information sheets and pamphlets

- Special guides

- Technical bulletins

- Safety alerts.

The provision of appropriate guidance is at the heart of the regulatory approach adopted by Health and Safety at Work Act 2015 which establishes broad general performance-based duties underpinned by a regulatory framework which encourages PCBUs to take responsibility for health and safety in their workplace and to establish appropriate safety management systems. Guidance tools are therefore a fundamental component of this regulatory framework, supporting PCBUs by providing information to help them comply with their duties.

External stakeholders also recognised guidance material as being an important component of the regulatory framework. They advised that significant resource is available within the wider health and safety system to support the development and maintenance of this material and WorkSafe should consider how these resources could be harnessed.

A wide range of guidance is published on WorkSafe's website and can be searched by Topic or Industry. There are 59 Topics and Industries covered and the information is easily accessible. 98% of respondents rated WorkSafe guidance as being useful or very useful[44].

We observed that there appears to be a lot of guidance material on the WorkSafe website which requires updating. As an example, most of the information on the website for the agriculture sector was dated 2017 or earlier and we noted that 41 of the 58 documents (71%) require updating. WorkSafe advised that they have insufficient resources to maintain the

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[43] *Work Health and Safety Regulatory Framework – How WorkSafe decides which tool to use.* Internal document dated 10 November 2020 – Page 43

[44] Appendix 10 - performance measure #18

regulatory framework. WorkSafe further advised that ACC used to fund and produce its own guidance, but this has now stopped. WorkSafe and ACC are working together to design a programme to update all guidance including proposed funding.

Our view is that out-of-date regulatory tools and legislative instruments represent a risk to the effectiveness of the health and safety system. WorkSafe should be funded on a sustainable and ongoing basis to maintain its 'regulatory real estate' including the introduction and implementation of changes in regulations. WorkSafe and MBIE need to determine the 'right resourcing' for this activity.

Approved Codes of Practice

Approved Codes of Practice are specifically recognised in Health and Safety at Work Act 2015. Although Approved Codes of Practice are not mandatory for PCBUs to comply with and cannot be enforced, they can be used as evidence in court proceedings to determine whether a PCBU has complied with duties. WorkSafe is responsible for the development and review of Approved Codes of Practice which represent 5% of WorkSafe's current guidance products.

We were advised that Approved Codes of Practice have substantial legislative requirements that govern their amendment or revocation, and changes are time consuming and difficult. Therefore they are not the best tool where guidance may be needed to be updated or improved in a timely/agile manner.

There are a large number of Approved Codes of Practice in place, and we were advised that they are a challenge for WorkSafe to maintain. As with Guidance material, we observed that there appears to be a significant number of Codes of Practice on the WorkSafe website which may require updating. For example, we observed that there are currently nine Electrical Codes of Practice listed on WorkSafe's website. The dates they were introduced range from 1993 to 2016. Given that this web page was last updated 4 September 2017, it is unclear if these codes are up to date technically and still fit for purpose for the electricity industry.

Confidentiality

Monitoring and Compliance

The monitoring and compliance area is where WorkSafe is at its most visible (publicly) and also its most vulnerable. More recently WorkSafe had been trialling a new tool it has called Targeted Complex Intervention. The aim of this tool is to achieve *a behavioural change in the duty holder to effect a demonstrable improvement in its health and safety performance.* The initiative provides an in-depth review of a duty holder's health and safety system to determine the underlying causes of poor workplace health and safety outcomes. This approach has been adopted in relation to a review of the Talley's group of companies.

In a media release relating to this Targeted Complex Intervention, the Chief Executive of WorkSafe stated:

> *We are concerned that where health and safety issues continue to arise in a company or a group of companies, this may indicate there are systemic issues the need to be addressed in the boardroom.*

Health and Safety at Work Act 2015 places clear health and safety obligations on all levels of businesses from the board room to the production line so WorkSafe will be looking at every aspect of the Talley's group's health and safety performance….

Our approach with Talley's is not an investigation, nor is it linked to an individual incident.

While obligations exist throughout a business, leaders have an obligation and the influence to create healthy and safe workplaces and focusing on the duties of officers under Health and Safety at Work Act 2015 is a priority approach for WorkSafe.

In relation to its monitoring and compliance role, an intervention of this type (that goes to the core of the safety management systems of a large group of companies with a focus on the duties of the group of company's officers) is more likely to effect a change in health and safety outcomes given its focus. It is also signalling to other businesses that their responsibilities for workplace health and safety are not to be taken lightly.

We agree with WorkSafe's view that monitoring and compliance activities need to be targeted and used on a systemic basis, and strongly support this new initiative. We would encourage WorkSafe to undertake a number of Targeted Complex Interventions each year by reallocating resources from other more compliance-based activities. Evaluation of this initiative against other monitoring and compliance activities should be undertaken to determine the optimal resource allocation.

Regulatory Risk

Defining and Assessing Regulatory Risk

There appears to be a lack of clarity around regulatory risk. In an aide-memoire to the Minister dated 13 August 2021 regulatory risk was described as:

…. the gap between what we need to regulate and the resources, systems and processes we have available to do this.

In the Operational Policy paper: *How we regulate[45],* WorkSafe described regulatory risk as:

…. these are (the) risks to us achieving our regulatory objectives, which are set out in legislation. This is also known as 'political risk' because if we fail to achieve our regulatory objectives people will lose confidence in us as a regulator.

In a presentation to the WorkSafe Board dated September 2021 regulatory risk was described as:

…. the risks to WorkSafe achieving its regulatory objectives, which are set in legislation. This risk changes as the external environment shifts, social expectations change, and emerging risks are identified and quantified. New regulatory activities drive trade-offs that potentially raise regulatory risk

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[45] How we regulate, WorkSafe, August 2021, page 1.

These statements are inconsistent with each other and lack clarity. We note there is no standard definition of regulatory risk, as it arises from changes to legislation, regulations and other instruments and will vary depending on the regulator's mandate and sector. However WorkSafe defines regulatory risk, risk is identified in the government's expectations for good regulatory practice[46] and is an important component of being a 'really responsive regulator'.

A clear definition of regulatory risk will help WorkSafe guide decisions on how it operates and allocates its resources, and will also assist to identify the type of information that needs to flow to the Board to inform risk assessment. We suggest WorkSafe undertakes an in-depth exploration of how it identifies and mitigates risks to the performance of the health and safety system to the Board and external stakeholders.

Current Risks

We are aware of three areas where it appears that WorkSafe may not be meeting its core regulatory functions and has not been, or has been slow, to address known and immediate risks to health and safety:

1. **Keeping regulatory tools and legislative instruments up to date**

   For any regulator, the state of its suite of regulations, standards, codes of practice, safe work instruments, guidance material etc., will be a factor in how well they are able to respond and support the changing environment which they regulate. The Health and Safety at Work Act 2015 sets up a permissive regulatory framework, with less prescriptive rules and standards than in other regulatory regimes such as land transport. Nevertheless, an ongoing and continuing focus on ensuring WorkSafe's suite of regulatory tools and legislative instruments are up to date is required.

   There is an agreed programme between WorkSafe and MBIE in relation to ensuring its Regulations are fit for purpose which is published on MBIE's website[47]. Of equal importance for many PCBUs and workers, WorkSafe provides a broad range of information on its website including Guidance, Good Practice Guidelines, Fact Sheets, Interpretative Guidelines et al. We observed that a lot of material required updating (as noted on the website). Provision of this material is one of WorkSafe's statutory functions. We were advised that there are insufficient resources to maintain this material.

   Our view is that out-of-date regulatory tools and legislative instruments represent a risk to the effectiveness of the health and safety system. WorkSafe should be funded on a sustainable and ongoing basis to maintain its 'regulatory real estate' including the introduction and implementation of changes in regulations. WorkSafe and MBIE need to determine the 'right resourcing' for this activity.

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[46] See pages 4 and 5 https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf

[47] https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-systems/health-and-safety-at-work-regulatory-system/

2. Processing authorisations

WorkSafe currently has a programme of work to review its authorisation regimes. A December 2020 internal review of the authorisations process noted that '*current levels of Authorisations Officers are insufficient to achieve timely processing of authorisations to ensure it meets regulatory requirements*' [48].

Given the importance of this component to WorkSafe's regulatory role, insufficient resources to perform this function properly presents a risk to the health and safety of workers. This issue has been a known area of regulatory risk for some time. We note that addressing the findings in the December 2020 review is one of the workstreams in the regulatory improvement programme (Ngā Paiaka). However, this work is yet to be scoped, costed and approved by the Senior Leadership Group.

Confidentiality

3. Responses to fatigue in the road freight transport industry

The July 2021 research/investigation into fatigue in the road freight transport industry[49] outlined above found that there are currently overlapping and unclear agency roles and responsibilities in relation to on-road harm. The report made the following recommendation[50]:

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[48] WorkSafe Authorisations Process Review – Recommendations for Improvement – 22 December 2020.

[49] WorkSafe report identifies steps for improving transport safety | WorkSafe

[50] Managing vehicle-related risks from supply chain pressures, Mackie Research, 5 March 2021, page xii.

Recommendation 3 – Clarification of Government Roles	Ownership: The regulatory agencies and others involved in designing work and safety systems
Clarification of the roles and co-operation between government transport-related agencies (principally WorkSafe, Waka Kotahi, Ministry of Transport and Police/Commercial Vehicle Safety Team). There should be a focus on clearer communication with industry and co-operation around regulation, Occupational Health and Safety leadership, education, prosecution, and enforcement.	Impact: Short-term: clear action and leadership from the agencies. Longer-term: compliance with regulations, clear expectations of Occupational Health and Safety duties, and improved health and safety.

Table 2: Mackie research report Recommendation 3 [51]

This is consistent with WorkSafe's view. WorkSafe sees a need to clarify its role and its approach to on-road harm including cross-industry guidance on vehicles as a workplace[52].

However, regulatory overlap of Health and Safety at Work Act 2015 with other regimes does not give rise to legal barriers preventing WorkSafe from taking action under Health and Safety at Work Act 2015. Section 35 deals with overlaps by providing that a court may have regard to other enactments when determining whether a duty imposed by or under the Act has been complied with. There are a few instances where health and safety regulations don't apply if there are other regimes in place, for example the Adventure Activities regulations where there is CAA adventure aviation rules, but none yet in land transport.

Any perceived overlap of WorkSafe's roles and responsibilities under Health and Safety at Work Act 2015 with other regimes therefore should not prevent WorkSafe from investigating potential non-compliance with the Act and taking enforcement action. We note that decisions for another agency to undertake an investigation rather than WorkSafe may be made for reasons of efficiency for both PCBUs and regulators to avoid duplicating agency activity and resources, but this does not change WorkSafe's responsibilities as Regulator.

Our view is that given the current lack of agreement over roles and responsibilities of government transport-related agencies, as the regulator and system leader WorkSafe should be intervening and undertaking enforcement in the transport industry as a matter of urgency.

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[51] Ibid, page xiv.

[52] Slide 10, *Hoe Nuku Key priorities 2021/22* presentation.

2. WorkSafe's Performance

This section focusses on the question: '*How well is WorkSafe performing?*'.

Context

WorkSafe has worked through its establishment phase and is doing many of the things you would expect of a maturing organisation and regulatory agency.   Given its starting context and broad mandate, it has responded well to the challenges of leading a new health and safety system in New Zealand.

WorkSafe is looking for new and innovative ways to reduce work related injuries and harm through better work design, changes to the supply chain, and risk-based regulatory interventions. Examples of new initiatives being undertaken by WorkSafe include developing and trialling different ways to undertake its work include (such as complex targeted interventions), strengthening worker engagement and participation, targeting specific areas of harm such as accelerated silicosis, working in conjunction with Maritime NZ in targeting risk areas in NZ ports, and working to increase the supply of occupational hygienists in NZ to support improvements in work related health. It has set up The Partners Council (Te Kahu Matai) which brings together whanau, hapu, iwi and other community groups that have a stake in ensuring health and safety in the workplace improves. Through its Innovation group, WorkSafe is working to engage workers with how they manage risks to shift the focus away from a documentation/compliance culture and gradually incorporate this approach into its investigations area.

WorkSafe also has a number of initiatives underway to improve its organisational performance. These initiatives include developing a career structure for investigators, creating a digital workplace, building work-related health capability and improving knowledge and insights to inform interventions. These initiatives will enable WorkSafe to operate more effectively as a single entity, share information and resources, develop its capability and be in a position to implement organisational initiatives more easily than has been the case to date. We strongly support the intent of these initiatives - how effectively these are implemented will determine the contribution they make to WorkSafe's performance.

Outcomes

Performance against the three key Health and Safety System Targets[53] are summarised below:
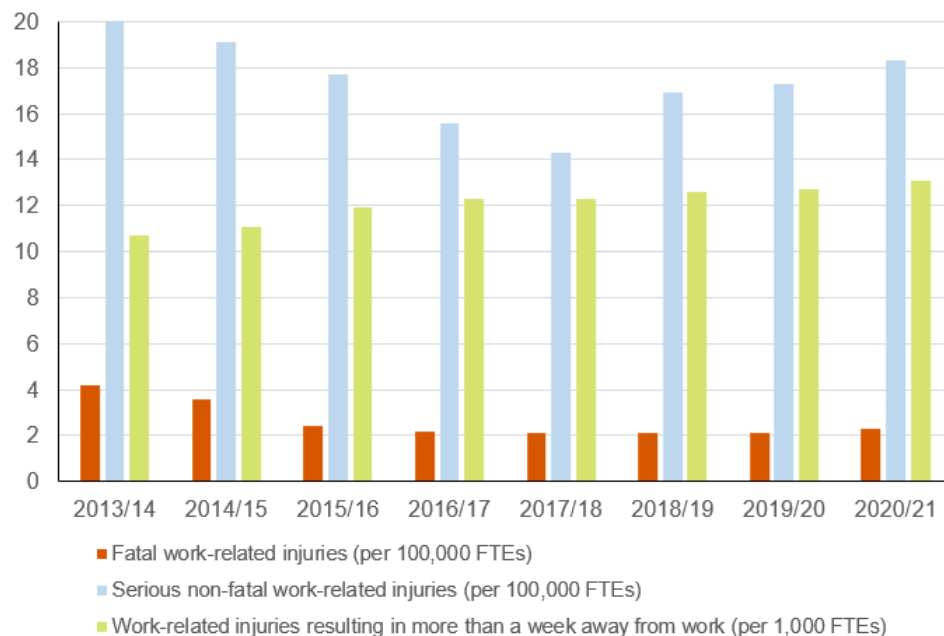
Figure 1: Key Outcome Measures for Reporting Years 2013/14 to 2020/21[54]

The three system targets were established in 2012 as part of the government's Working Safer Blueprint. The target was to achieve a 25% improvement from a 2008/10 in work health and safety outcomes baseline by 2020. One of the three measures has achieved this target: Fatal worked-related injuries were 35% lower than 2008/10; Serious non-fatal work-related injuries were 9% lower; Work-related injuries resulting in more than a week away from work were 12% higher.

Since establishment, two of the three system targets (Fatal work-related injuries and Serious non-fatal work-related injuries) showed an initial reduction in injury rates, but this trend levelled off by 2017/18 and injury rates started to increase. The third measure (Work-related injuries resulting in more than a week away from work) has increased consistently over the eight years since establishment. Overall the three system targets show an adverse trend over the last three years.

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[53] WorkSafe Annual Report 2019/20 (pages 15 and 75) refers to these three measures as system targets.

[54] Figures are sourced from WorkSafe Annual Reports. Reporting years are typically two to three years after the year in which the injury occurs – for example, injuries occurring in 2018 are reported in the 2019/20 year. 2020/21 figures are from WorkSafe's draft 2020/21 Annual Report. 2020/21 non-fatal injuries are provisional.

WorkSafe is keenly aware of these trends, is identifying the causes and is taking steps to further reduce rates of acute harm as set out below. The examples we have been given show that WorkSafe is looking for new and innovative ways to reduce work-related injuries through better work design, changes to the supply chain, and risk-based regulatory interventions. These are set out below:

(a) Fatal work-related injuries

Fatal work-related injuries fell over the first four years to a low of 2.0 deaths per 100,000 FTEs in 2017/18, which was 39% below the 2008/10 baseline. However this has gradually increased over the last three years to 2.3 deaths per 10,000 FTEs in 2020/21. WorkSafe has identified that around two thirds of fatalities involve working in or around a vehicle, with the greatest number of vehicle-related fatalities being in agriculture (with most accidents occurring on farms or private roads) and road transport (with the great majority of accidents occurring on the road). The single most common injury mechanism is trucks or utes. During 2017-2019, these accounted for a quarter of all fatalities recorded by WorkSafe (52 out of 205), with the majority being on the road.

WorkSafe has advised that it is working to address work-related fatalities in a number of ways, including:

- *Safer agricultural vehicles* - Existing initiatives in place include an ACC subsidy for crush protection devices on quad bikes and a marketing campaign promoting seatbelt use. WorkSafe is also planning to: work with the supply chain to improve availability of safer vehicles, supported by a campaign to promote their use; share ways of working that eliminate the risk of serious vehicle accidents; explore options to better support lone workers with emergency communication devices.

- *Addressing supply chain pressures in road transport* – Regulatory action in the road transport sector has tended to focus on drivers and to a certain extent their direct employers. WorkSafe is looking at how their actions are constrained by the wider system in which they work, notably by the time and cost pressures transmitted through the supply chain, and commissioned in-depth research. This is leading to a focus on encouraging upstream supply chain purchasers and investors to reduce time and cost pressures on Trucking operators (although as noted above in our report, there are questions around whether this is the most effective use of WorkSafe's limited resources).

- *Specific vehicle harms* - Since 2013, there have been 11 fatalities linked to forklifts. As well as developing guidance for Site Traffic Management, in 2021 WorkSafe delivered a forklift roadshow to engage and educate on forklift safety. In addition, WorkSafe is in the final stages of developing guidance for roadside workers. This has involved working with Waka Kotahi to apply a risk-based approach to temporary traffic management.

- *Supply chain interventions in forestry* – The forestry industry has seen improved health and safety performance overall, but there are still four to five fatalities every year, with most of these concentrated in tree felling. WorkSafe is challenging the industry to rethink how forestry work is conceptualised and designed. This includes moving towards mechanisation in existing operations, as well as working with land and forest owners to consider the longer-term approaches to planting and harvesting.

- *Risk-based operational interventions* – Assessments will increasingly be targeted based on risk. This will be supported by an internal learning and development programme and by the continued evolution of WorkSafe's Company Risk Model (CRM).

- *Plant and Structures reform* – This will modernise the regulatory framework for the hazards that constitute most of this harm. Alongside WorkSafe's initiatives, regulatory changes are set to be introduced responding to plant (machinery, equipment, tools, and vehicles) and structures as a leading cause of harm. Together, the risks from these areas account for 79 per cent of work-related fatalities from injury.

(b) Serious non-fatal work-related injuries

Serious non-fatal work-related injuries also fell over the first four years to a low of 14.2 per 100,000 FTEs by 2017/18 but progress has since reversed, with rates rising over the last four years to 18.3 serious injuries per 100,000 FTEs by 2020/21. WorkSafe notes that these rates are also below the 2008-2010 baseline of 19.1 serious injuries per 100,000 FTEs. They advise that due to data limitations, the reasons for the increasing trend cannot be clearly identified. WorkSafe is working with ACC and the Ministry of Health to get better data on serious non-fatal injuries, so it can gain an improved understanding of what causes these injuries and take more focused actions.

The total number of serious non-fatal injuries increased from a low of 347 injuries in 2016 to 503 in 2019. The data that is available shows that the increase occurred across multiple sectors, with construction being the largest contributor accounting for 55 of the 156 additional injuries (35%).

The range of interventions that aim to address fatal accidents should also contribute to reducing serious non-fatal injuries. In addition to the actions noted above, examples of how WorkSafe is addressing the increase in serious non-fatal work-related injuries include:

- *Integrating health and safety into work design* – WorkSafe plans to work with other agencies to support a health and safety focus in publicly funded construction such as: civil construction sector (roads, bridges, tunnels), non-residential construction (hospitals, schools), and a minor role in residential construction through Kainga Ora.

- *Risk-based operational interventions* – As noted above, assessments will increasingly be targeted based on risk, supported by an internal learning and development programme and by the continued evolution of CRM. The current focus areas include mobile plant and working from height, which are key risks in construction.

(c) Work-related injuries

Work-related injuries resulting in more than a week away from work (WAFW) have risen consistently over the seven-year period to 13.1 injuries per 1,000 FTEs in 2020/21. WorkSafe advises that this trend is being driven by an increase in musculoskeletal injuries, such as sprains and strains, especially in the construction, manufacturing and health care sectors. Research shows that work-related musculoskeletal harm is driven by a range of factors involving the interaction of a person with their work environment, including the way work is organised, the pace of work and the physical and psychosocial environment. WorkSafe notes that the data is drawn from accepted ACC injury claims and the reported increase in WAFW injuries may also be partially driven by improved access to the ACC scheme.

WorkSafe is addressing this issue by focusing on promoting good work design, working with and alongside ACC and industry leadership groups and intervening higher in the supply chain to promote safer plant and structures. Examples of specific actions it is taking include:

- *Internal capability build* – WorkSafe has significantly built its capability to drive improved work design through recruitment of two specialist teams in Health and Safety by Design, and Human Factors and Ergonomics. This increased capability will support collaborative work across sectors and through supply chains, as well as the update and further development of guidance and educational tools.

- *Good work design initiatives* – These include: a multi-year project funded by ACC and led by Construction Health & Safety New Zealand (CHASNZ) to address musculoskeletal harm in the residential construction industry; an initiative to explore and develop approaches to addressing musculoskeletal harm in the dairy farming sector; a pilot on prototype development to address seasonal peaks in harm in horticulture.

- *Input to health sector reform* – WorkSafe is engaging with health sector leaders to explore opportunities to better integrate worker health and safety into the planning and delivery of health care.

- *Risk-based operational interventions* – In addition to targeting operational interventions at specific risks through inspection activity, WorkSafe is looking to target larger employers that consistently come to its attention. One of the first operations of this kind will be in the food product manufacturing sector, which is one of the main contributors to the increase in body stressing and other types of WAFW injuries.

Performance Measures

WorkSafe reports externally against 32 performance measures which are a mix outcome, impact and efficiency measures (refer Appendix 11). Performance reported against WorkSafe targets in the 2019/20 Annual Report is summarised below[55]:

Performance Summary	2019/20
Number of measures achieved	14
Number of measures not achieved	10
Number of measures not measured or achievement cannot be assessed	8
Total Measures	**32**

Table 3: Performance against targets 2019/20

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[55] We were unable to analyse the 2020/21 performance results because the Annual Report had not been completed at the time of this review.

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Overall the reported performance measures do not provide a very positive picture of WorkSafe performance and there has been an adverse trend in a number of measures over the last four years. It was not clear to us whether this reflects problems with the definition and collation of performance measures, or real performance issues – so we asked the question. We were advised that the strategic outcomes framework and accompanying measures had been significantly revised for 2021/22 and outyears as part of the modernisation programme. Performance in the future would be tracked against impacts rather than measures.

The update of WorkSafe's strategic outcomes framework and performance measures is set out in the 2021/22 Statement of Performance Expectations and Statement of Intent. We were advised that part of the focus has been to design performance measures which are measurable, meaningful and support achievement of WorkSafe's outcomes. This is a positive step, but it will make it difficult to track trends in performance since the establishment of WorkSafe using published data. For example:

- 2021/22 Statement of Performance Expectations has 28 performance measures, of which 22 are new;

- 2021/22 Statement of Intent has 12 outcome indicators, of which six are new measures with new baselines to be established; and

- 2021/22 Statement of Intent has 18 impact measures, of which 12 have new baselines to be established.

Hard data relating to regulatory interventions (i.e. number of assessments, investigations, notices, prosecutions etc.) has been removed from the 2021/22 Statement of Performance Expectations and 2020/21 Statement of Intent and will not be reported externally in accountability documents. However we were advised that this information will be provided to MBIE and the Minister. We note that this is potentially a lost opportunity for WorkSafe to highlight the range and volume of activities they are undertaking and changes over time. It will also reduce external accountability.

MBIE may want to request WorkSafe to continue to provide the regulatory intervention activity measures in Appendix 10, so that it is are able to track the effort being applied to regulatory interventions which are a key part of the Regulator's toolbox.

Activity Volumes

Overview

A primary function of WorkSafe is to monitor and enforce compliance with the health and safety system (WorkSafe New Zealand Act 2013 sec 10(c)). To deliver this function, WorkSafe undertakes and reports on 17 regulatory interventions (refer Appendix 9). The 17 activity measures cover the Regulatory Activities, Enforcement Activities and Enforcement Actions undertaken by three of the five Operations branches - General Inspectorate; Specialist Interventions; and High Hazards, Energy & Public Safety (refer Appendix 5). There are no externally reported activity measures for the other two Operations branches - Operational Excellence and Operations Modernization, or for the three service delivery groups - External

Strategy and Engagement; Regulatory Effectiveness and Legal; and Health and Technical Services. The published activity measures therefore only tell part of the performance story.

The published activity measures indicate that there have been significant changes over the three years from 2016/17 to 2018/19[56] - Regulatory Activities increased by 3%, Enforcement Activities by 197% and Enforcement Actions by 6% as summarised below:
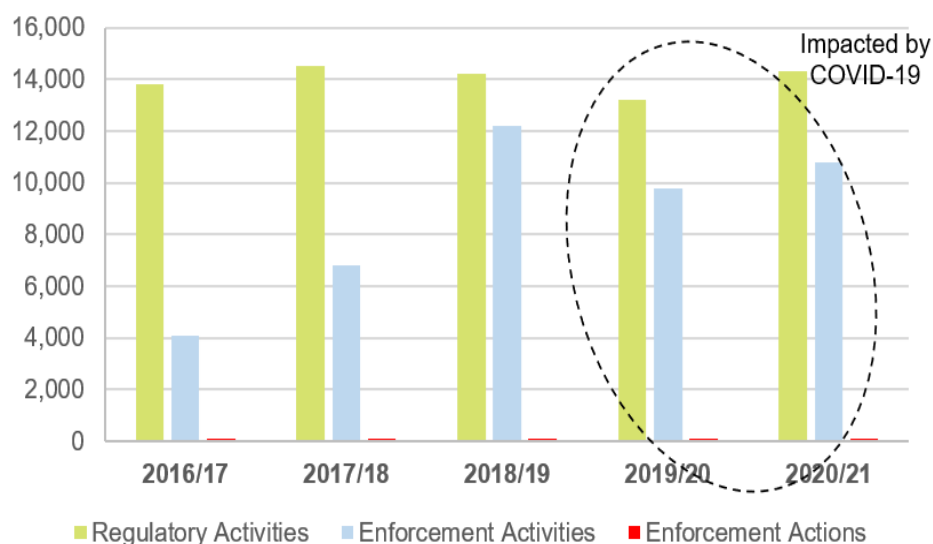
Figure 2: Activity levels 2016/17 to 2020/21 [57]

The consolidated figures hide a number of underlying changes. For example, the apparent stability of Regulatory Activity volumes over the first three years reflects the large number of Assessments and hides significant decreases in Investigations and Audits. In order to unpack these changes and understand the impact on resourcing, we requested access to all detailed activity data held by WorkSafe. Our analysis and findings are set out in the following sections.

Notifications

Notifications of concerns, incidents, injuries and fatalities are one of the key drivers of WorkSafe activities and provide information on workplace situations or events which may require regulatory intervention. Data on notifications is highly detailed, and we expected WorkSafe to be using this data to identify changes in its work demand and whether it needed to respond by reallocating resources or funding.

Notifications of Concern, Injuries and Incidents, and the proportion resulting in Warnings/Agreements or Investigations over the eight years since establishment are shown below[58]:

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[56] The comparison is against 2018/19 because activity in 2019/20 was impacted by Covid-19.

[57] We have been advised that activity data prior to 2016/17 is not available.

[58] Data on Injuries and Incidents is not available prior to 2016.

Total Notifications per month | Proportion resulting in Warnings/ Agreements or Investigations (%)
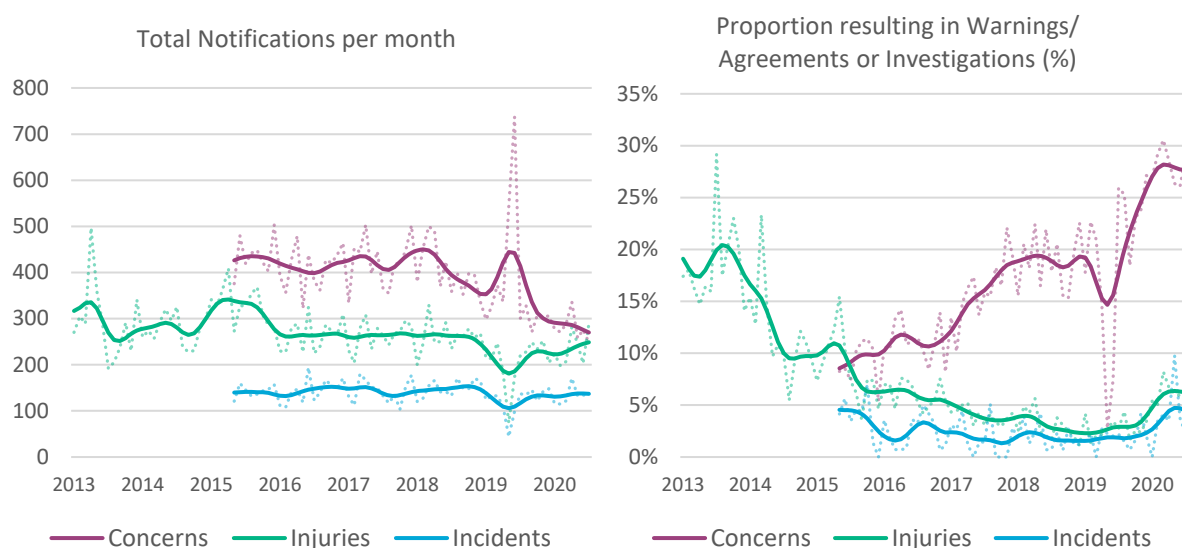
Figure 3: Notifications and Proportion resulting in Warnings/Agreements or Investigations

Notifications of Concern[59] on the left-hand graph show an ongoing declining trend since 2019. This trend accelerated following a spike of activity in April/May 2020, with Notifications of Concern currently 40-50% lower than in early 2019. Over the same period, the proportion of Notifications of Concern resulting in Warnings/Agreements or Investigations (on the right-hand graph) increased significantly from around 8% in 2016 to a current high of around 28%. This inversely correlates with the decline in notifications, but it is not clear whether this implies a causal relationship between actions and notifications.

In contrast to Concerns, Notifications of Injury or Incidents[60] (left-hand graph) remained broadly stable over the last eight years with a drop in April/May 2020 which reflects the impact on the first Covid-19 lockdown. However, over the eight year period there has been a significant decline in the proportion of actions resulting from Notifications of Injuries, from over 20% in 2014/15 to around 5% in 2020/21. The proportion of Notifications of Incidents resulting in actions has remained fairly stable, ranging from 2% to 5%.

We were interested in how these volume changes and the relationships between notifications and the proportion resulting in actions could provide insights into WorkSafe workloads and resourcing needs. We were also interested in whether a 2% to 5% action rate was appropriate for a Regulator. WorkSafe advised as follows:

(a) Notifications of Concern

Concerns are matters raised by members of the public where they believe they have observed unsafe workplace conditions or practices. The decrease in notification volumes may just reflect changes in definition and understanding of the public rather than changes in underlying Health

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[59] Include complaints about unsafe work practices or notifications about potentially unsafe conditions.

[60] A notifiable incident is where a person has been exposed to a serious and immediate risk of harm.

and Safety issues. The Health and Safety at Work Act 2015 brought in changes to definition of a notifiable event. Over time WorkSafe has become better at determining and communicating what constitutes a notifiable concern under the Act. Where concerns are outside WorkSafe's jurisdiction, they may now be being turned away without creating a file (or record). Decreased volumes probably reflect the impact of these initiatives and may not be impacting on WorkSafe workloads.

WorkSafe has not explored whether there is a causal relationship between notifications and the proportion resulting in actions.

(b) Notifications of Injuries and Incidents

Notifiable events (injuries/illnesses/incidents) are different to concerns and are required by legislation to be notified to WorkSafe by the PCBUs involved. It is therefore not surprising that these volumes have remained fairly stable over time.

The decline in the proportion of Notifications of Injuries resulting in actions reflects an increased focus on education and other interventions in preference to enforcement actions. Therefore the reduction in formal enforcement actions may not necessarily decrease total WorkSafe workloads.

In relation to the 2% to 5% action rate, WorkSafe noted that if we consider all resulting interventions, the number of actions taken in response to notifications is closer to 50% – some form of action is taken on all notifications and concerns.

Conclusion

Notification volumes have generally decreased over the eight years since establishment, but are not linked to WorkSafe activities and therefore we are unable to draw any conclusions on the impact on resourcing or funding. WorkSafe appears to have a good understanding of notification data and the causes of changes in volumes and actions, but not how these impact on workloads and resourcing requirements.

Assessments

WorkSafe Assessments and the proportion resulting in Notices of Warning or Agreements over the eight years since establishment are shown below:
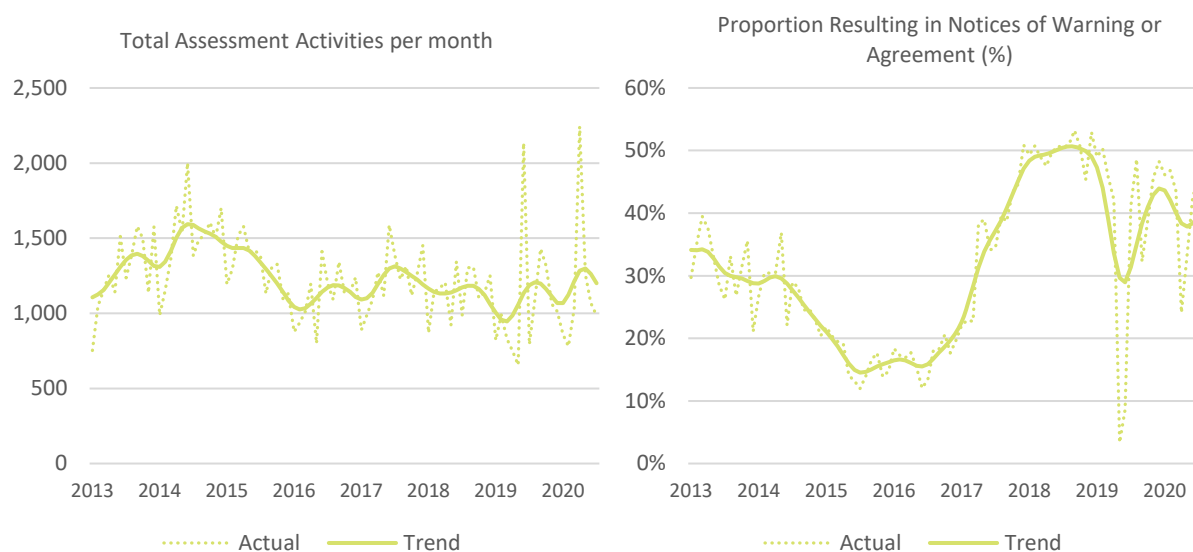
Figure 4: Assessments and Proportion Resulting in Notices of Warning or Agreements[61]

The number of Assessments increased over the first two years, reaching a high of around 1,500 per month by the end of 2014 and then declined to around 1,200 per month in 2017, and have remained broadly stable at this level. There have been spikes in Assessments in 2020 and 2021 within the retail trade industry which reflect Covid-19 lockdowns.

The Proportion of Assessments resulting in Notice of Warning or Agreement decreased over the first three years to a low of around 15% at the end of 2015 and settled at that rate. From 2017 the proportion increased over the next 18 months to a high of 50% and has settled at around 40%.

We note that the decline in Assessments from 2014 to 2017 in the left-hand graph correlates with the decrease in the Proportion resulting in Notice of Warning or Agreement over the same period in the right-hand graph. This is not the relationship we would have expected – we expected an inverse correlation, with the Proportion resulting in Notice of Warning or Agreement increasing as the number of Assessments declined. This suggests that there are other factors influencing the proportion of assessments resulting in actions. The overall increase in the proportion of actions to current levels of 40% suggests a deliberate change in operating strategy.

WorkSafe advised us that the significant increase in the proportion of assessments resulting in Notices of Warning or Agreement is likely to be caused by several factors, such as the release of Health and Safety at Work (Hazardous Substances) Regulations in 2017. These new

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[61] The trend line is a standard measurement similar to a centred moving average, but places higher weighting to data closest to the measurement point

regulations increased the documentation requirements of PCBUs. To ensure compliance there has been targeted assessments (particularly in the agriculture chemical space) and increased enforcement actions.

WorkSafe also advised that it has increased its focus on activities that are higher risk using improved tools such as the Company Risk Model (CRM) to ensure it is focusing on PCBUs where it can have the most impact. The increase in Proportion of Assessments resulting in Notice of Warning or Agreement is therefore a positive change because it shows that WorkSafe is taking a more proactive targeted approach to interventions.

Conclusion

Assessment volumes have been relatively stable over the eight years since establishment which suggests that increased resourcing is not required in this area. However, in the absence of links between Notification volumes, Assessment volumes, activities and resourcing, it is not possible to draw definitive conclusions.   The general increase in the Proportion of Assessments resulting in Notice of Warning or Agreement is a positive change because it shows that WorkSafe is taking a more proactive targeted approach to interventions

Investigations

WorkSafe Investigations and the Proportion Resulting in Notices of Warning or Agreements over the eight years since establishment are shown below:
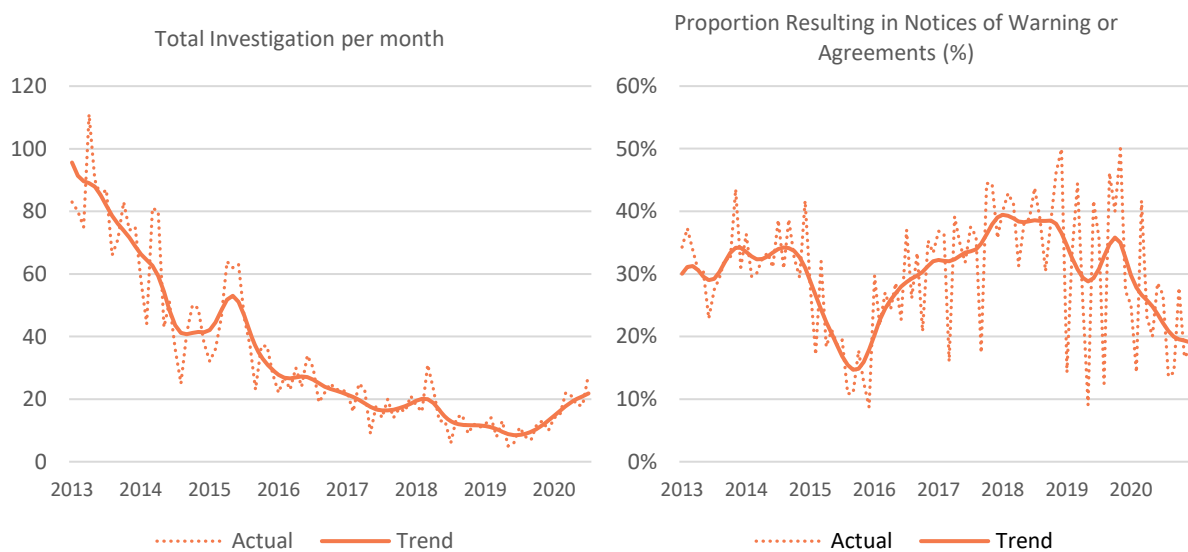
Figure 5: Investigations and Proportion Resulting in Notices of Warning or Agreements

The number of Investigations shown in the left-hand graph has dropped markedly from around 130 per month in 2013/14 to around 20 per month in 2020/21. This suggests a change in focus or strategy by WorkSafe.

The Proportion of Investigations Resulting in Notices of Warning or Agreements in the right-hand graph has varied significantly over the eight-year period ranging from around 15% to 40%. We would have expected this proportion to be inversely correlated with Investigations - with the Proportion resulting in Notice of Warning or Agreement increasing as the number of Investigations declined.

WorkSafe advised the decrease in investigations is due to a more targeted approach, in line with the Enforcement Decision-making Model (EDM) and investigations policy. This has been achieved by better identification of cases likely to lead to prosecution and referral of other incidents to other resolution pathways. This means that much of what would previously have been recorded as an investigation is now recorded elsewhere, including:

- Immediate Risk of Harm (IRH) previously recorded as investigations are now all reported to and handled by the General Inspectorate team.

- Cases not considered the highest priority for formal investigation have been referred to General Inspectorate for an assessment of conditions.

- All cases falling to others, CAA, Maritime or NZTA, are now referred direct to the other authority and not recorded as a WorkSafe investigation.

In addition, WorkSafe advised that the introduction of new regulations for high hazard industries (extractives, major hazard facilities and petroleum) in 2016 established requirements for PCBU's in those industries to undertake their own internal investigations for all notifiable incidents and report their findings to WorkSafe. These PCBU investigations, and subsequent reviews by WorkSafe Inspectors are not counted in the investigation numbers but do lead to significant improvements in the management of high hazard risk in those industries.

WorkSafe also noted that the Whakaari/White Island investigation consumed approximately 40% of all investigator resource in 2019/20, reducing capacity to investigate other incidents.

Conclusion

Investigation volumes have decreased significantly over the eight years since establishment which suggests that resources in this area could be too high and could be reallocated. However Investigations vary significantly in size, complexity, and duration, so it is not possible to draw definitive conclusions about the impact on resourcing without a framework which links investigation volumes to activities and resourcing. We were advised that the decrease in investigations is a positive change and reflects a more targeted approach, in line with the Enforcement Decision-making Model and investigations policy.

Enforcement Activities

Enforcement activities may result from notifications, assessments and/or investigations. There are at least eleven separate enforcement activities ranging from verbal directions to internal reviews (refer Appendix 9). For analytical purposes they are grouped together and are shown below for the eight years since establishment[62]:

Total Enforcement Activities per month
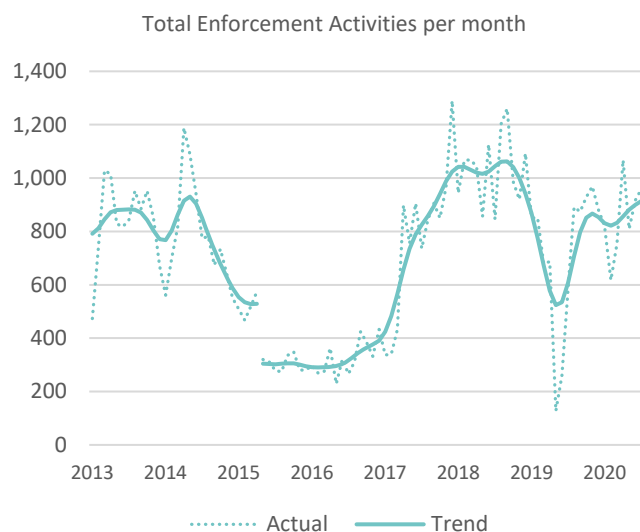
Figures 6: Enforcement Activities

Enforcement activity has varied significantly over the eight-year period, ranging from around 300 per month to over 1,000 per month. This is unexpected given that notifications and assessments have remained stable over the same period. The significant increase from 2016 to 2019 is also unexpected and suggests a change in focus or strategy by WorkSafe. The increases are due to increases in Verbal Directions, Directive Letters, Improvement Notices and Sustained Compliance Letters (refer Appendix 10).

As with the other activity measures, we sought explanations for the changes in volumes. The response was not particularly enlightening, and we assume that the growth in enforcement activities was due to the introduction of the Enforcement Decision-making Model. The model guides Inspectors and other decision-makers so that decisions on enforcement responses are consistent, transparent, accountable and proportionate to the risk involved[63].

We were advised that the decrease in 2019/20 was a direct result of the Covid-19 Level 4 Lockdown. Covid-19 continued to have an impact on the total enforcement actions in 2020/21. The Whakaari/White Island investigation had no significant impact on enforcement activities.

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[62] The break in the graph is caused by a change of measurement following enactment of the Health and Safety at Work Act 2015.

[63] Enforcement, Regulatory Function Policy, August 2017, page 8.

Conclusion

Enforcement activity volumes have increased significantly in the last five years which suggests that additional resources might be required. However it is not possible to draw definitive conclusions without a framework which links enforcement activities and resourcing. We assume that the increase in enforcement activities is a positive change which reflects the benefits of the Enforcement Decision-making Model.

Enforcement Actions

Enforcement actions comprise Infringement Notices, Energy Safety Infringement Notices and Prosecutions (refer Appendix 9). The volumes of Infringement and Energy Safety Infringement notices are so low that we have focused on Prosecutions for analytical purposes. Prosecutions also require more WorkSafe resources than notices. Prosecutions Disposed volumes over the eight years since establishment are shown below:
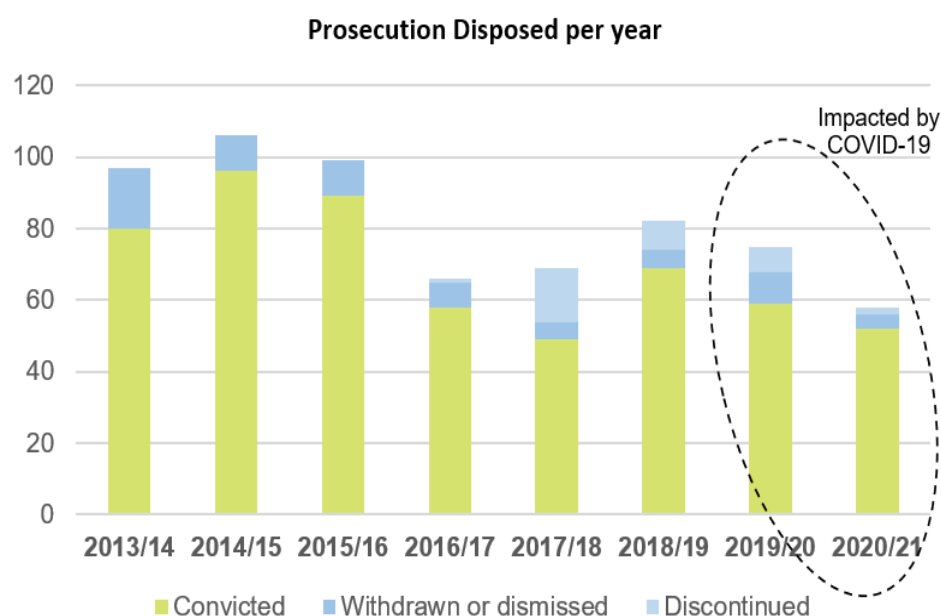
Figure 7: Prosecutions Disposed per Year

The trend has been a general decline in Prosecutions Disposed from a high of 106 in 2014/15 to a low of 58 in 2020/21. We asked whether this trend reflected a change in strategy or practices and were advised that the number of disposals is largely outside WorkSafe's control and that WorkSafe is dependent on decisions made by the Courts about timetabling, which is mostly determined by external factors. We were also advised that Covid-19 affected the progress of health and safety prosecutions through the courts in 2019/20 and 2020/21 as Courts gave priority to other matters during Alert Levels 4 and 3. The Whakaari/White Island investigation did not have any impact on the disposal of matters in the Courts.

We note that Investigations have declined at a greater rate than the decline in Prosecutions disposed (refer to section on Investigations above) and that the rate of Investigations resulting in prosecutions has increased sharply over recent years. We assume this reflects a more targeted approach, in line with the Enforcement Decision-making Model and investigations policy.

Conclusion

Prosecutions Disposed volumes have decreased significantly over the eight years since establishment which suggests that supporting resources (Investigators and Legal) may be too high and could be reallocated. However it is not possible to draw definitive conclusions without a framework which links Prosecution volumes to activities and resourcing.

We note that the rate of Investigations resulting in prosecutions has increased sharply over recent years is a positive change which reflects a more targeted approach, in line with the Enforcement Decision-making Model and investigations policy.

Resource Allocation

Framework to Guide Resource Allocations Decisions

To enable WorkSafe to implement its strategy and achieve its outcomes, ELT needs to be able to shift staff and other resources to support priority areas, programmes and/or initiatives. These resource allocation decisions should be based on an understanding of the cost and value of existing regulatory activity and the impacts on regulatory outputs and outcomes of changing resources.

We therefore expected WorkSafe to be able to describe the links between inputs-outputs-outcomes in some way as illustrated by the following model:
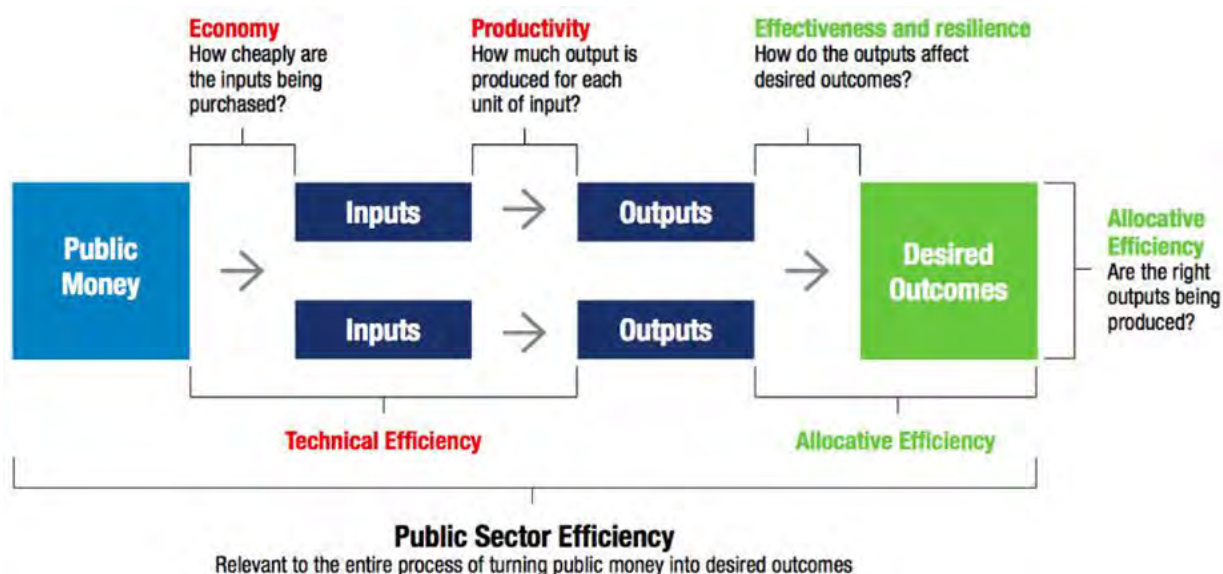
Figure 8: Public Service production function [64]

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[64] Improving public sector efficiency to deliver a smarter state - Civil Service Quarterly (blog.gov.uk) , UK Public Sector Efficiency Group, UK Government, Jan 2016

We expected to see a framework to assess activities and guide resource allocation decisions based on the above standard public sector inputs-outputs-outcomes model that incorporated four key elements:

1. **Clear understanding of the links between inputs-outputs-outcomes**. Inputs comprise people, materials, external advice/services, support functions, etc. Outputs are the activities (i.e. regulatory interventions, services, education or other deliverables) undertaken by WorkSafe. Outcomes are the reductions in deaths, injuries or other goals which WorkSafe is striving to achieve. Understanding the links between inputs-outputs-outcomes will enable ELT to consider the impacts on achievement of its goals of shifting people or other resources from one area to another.

2. **Output costing (in FTEs & $$$s)**. Inputs (people, materials and other resources) should be allocated to activities, and activities should be costed and grouped to form outputs. Output costing will enable ELT to see the resources used by its activities and assess whether the allocation is appropriate.

3. **Activity measurements and monitoring**. The amount of activity undertaken (e.g. number of assessments, investigations, notices, etc) should be measured, and changes over time should be tracked and compared to changes in inputs and outcomes. Activity monitoring should be comprehensive – cover the full range activities undertaken by WorkSafe. Activity monitoring will enable ELT to track the effort incurred by front-line staff.

4. **Assessment of benefits of each activity**. The benefit or 'relative value' of each activity in achieving outcomes should be estimated and understood. Assessment of benefits can include technical exercises (e.g. using benefit: cost assessment tools) as well as management judgements on the contribution of different outputs to outcomes. Assessment of benefits together with activity monitoring, output costing and a clear understanding of the links between inputs-outputs-outcomes will enable ELT to make well informed resource allocation decisions.

We attempted to identify these four key elements in WorkSafe and identify how they were used to make resource allocation decisions.

We were advised that documentation of the links between inputs-outputs-outcomes does not exist and is being developed by the strategy and business architecture teams. WorkSafe has identified this as a gap and the top overarching goal for all business groups in their 2021/22 Business Plans is 'aligning our core activities (stet) outputs with achieving the impacts and outcomes we are looking for in our Strategic Outcomes Framework'[65].

We were advised that resources (FTEs and funding) are not allocated to activities or outputs, and that activities and outputs are not costed. WorkSafe was unable to provide us with the resource levels of activities which might be used to inform resource allocation and prioritisation decisions.

Monitoring is undertaken of most, but not all activities. As outlined above, WorkSafe has eleven business groups of which seven undertake regulatory activities. Activities are identified and

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[65] Business Goal no.1 for all business groups in 2021/22 Business Plans.

measured for three of the five Operations branches: General Inspectorate; Specialist Interventions; and High Hazards, Energy & Public Safety (refer Appendix 5). These branches regularly report actuals versus budgets and WorkSafe targets for these activities, both internally and externally, but there is no costing by activity and it is not possible to easily identify the resources incurred to deliver specific activities. There are no activity or cost measures developed for the other two Operations branches - Operational Excellence and Operations Modernisation, or for the three other service delivery groups - External Strategy and Engagement; Regulatory Effectiveness and Legal; and Health and Technical Services.

Evaluation or assessment of benefits is undertaken by the Research and Evaluation Team. The Research and Evaluation team tends to focus on initiatives, projects and programmes rather than business-as-usual activity. This means that there has been limited evaluation of core regulatory activities. There is no programme to systematically evaluate WorkSafe activities. WorkSafe advised that this was due to a range of factors including: limited evaluation capacity; lack of demand for evaluation services; and an increased focus on research in preference to evaluation.

In response to the question how WorkSafe makes resource allocation decisions in the absence of a decision-making framework, we were advised that decisions to prioritise activities or initiatives are made by the Executive Leadership Team as part of the strategic planning process. General Managers then make decisions to reallocate resources within their existing budgets and organisation structures as part of their business planning processes. The allocation of staff and other resources is therefore largely determined by the existing organisation structure rather than the effectiveness or relative value of different regulatory activities. In some cases programmes are established which are funded by either shifting staff and other resources from existing business teams or through new funding. New resources have been added with funding provided from successful budget bids (Information Technology and business development), increased ACC programmes, and Whakaari.

Common elements of good practice

We have considered the resource allocation information provided by a number of other Crown entities[66] undertaking regulatory functions. While each agency does this in a slightly different way, there are a number of common elements. These are:

- How each output contributes, links or maps to result areas or outcomes is identified.

- Total activities undertaken by the entity are disaggregated into a number of outputs or output classes.

- Resources consumed and revenue associated with each output are identified.

- Main activities that make up each output are described, usually in operational terms that describe what is actually done.

- Performance and/or activity measures for each output are identified.

By way of example, the accountability framework used by the Energy Efficiency and Conservation Authority (EECA) is simple: EECA's primary outcome, intermediate outcomes (or

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[66] Civil Aviation Authority, Maritime New Zealand, Waka Kotahi, EECA and the Commerce Commission.

impacts), priorities, actions and how they link together is clear. The Statement of Intent[67] and Statement of Performance Expectations[68] mirror each other, and have one outcome framework diagram with the same input-output-outcome links and explanations. Output classes are costed, and the relative value of interventions can be assessed (using the estimated proportion of emissions generated by the sector reflecting the output class) which provides a basis for making resource allocation and trade-off decisions. By covering all the common elements identified above, the structure and information provided in EECA's accountability documents make it much easier to understand what they do compared to WorkSafe (while recognising that ECCA is a less complex organisation).

A further example is Maritime New Zealand[69]. Maritime New Zealand with total expenditure of $56.6m in 2019/20 and 286 people, is under half the size of WorkSafe, and yet has five departmental output classes and fourteen sub-output classes[70]. Performance and costs are measured and reported at the sub-output level.

WorkSafe has one output class and there is limited operational information about the actual activities undertaken by WorkSafe.   While there is no best practice model as such, adoption of these common elements would make it much easier to identify how WorkSafe operates, the relative value of its activities and interventions, and provide a basis for making resource allocation and trade-off decisions.

Previous Reviews

We note that 2016 Value for Money Review[71] identified the need to identify the costs of regulatory activities:

> *'In order to more fully evaluate its regulatory performance, it would be useful for WorkSafe to develop greater understanding of the costs involved at regulatory activity and output levels, and align its financial reporting with this. This should be done in discussion with Treasury and MBIE'[72].*

The review also identified that robust data and analysis was needed to support resource allocation decisions:

> *'WorkSafe needs to strengthen its internal analysis capability to provide more consistent, robust data and analysis to support decisions on resource requirements and deployment'[73].*

We note that both Treasury and MBIE had concerns about WorkSafe's ability to identify the costs of regulatory activities and allocate resources in late 2018 when they reviewed the

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[67] https://www.eeca.govt.nz/assets/EECA-Resources/Corporate-documents/EECA-Statement-of-Intent-2021-2025.pdf

[68] https://www.eeca.govt.nz/assets/EECA-Resources/Corporate-documents/EECA-Statement-of-Performance-Expectations-2021-22.pdf

[69] https://www.maritimenz.govt.nz/about/annual-reports/documents/MNZ-annual-report-2019-2020.pdf

[70] In addition to departmental outputs, there are five non-departmental outputs.

[71] Value for Money Review WorkSafe NZ, Martin Jenkins, 31 August 2016.

[72] Ibid, page 43.

[73] Ibid, page 1.

Business Case and 2019 budget bid. In advice to the Minister for Workplace Relations and Safety on the 2018 Business Case MBIE officials noted:

'The business case does not outline in much detail how it currently allocates resources in these activities, what this achieves in terms of harm prevention, and any resulting shortfall in output, so we [are] unable to assess what flexibility and capacity it has in this area under current resourcing'[74].

We also note that PwC completed a review of WorkSafe's prioritisation and resource allocation processes in 2019. The report observed that 'the [prioritisation] approach is heavily oriented to new initiatives and does not focus much if at all on existing expenditure'[75]. The report identified the following agreed action that would be completed by March 2020:

'As part of the strategic phase of the FY21 planning process, review the overall allocation of resources across regulatory levers and roles and decide whether any adjustment is warranted'[76].

We asked whether the agreed action in the 2019 PwC had been implemented and were provided with a paper which stated that the action had been addressed and was now closed. The steps taken were:

'Design and develop the approach to prioritise initiatives across the organisation. Establish Taura Here Waka governance;

Guidance of budget parameters have been developed and endorsed by CE and socialised; and

Operating effectiveness of processes designed are applied / tested as part of FY21/22 budgeting and planning'[77].

To better understand WorkSafe's response to the agreed action, we requested a copy of the underlying papers or documents. These papers outlined investment prioritisation frameworks and business planning and budgeting processes. The papers did not include a review of the overall allocation of resources across regulatory levers and roles, or an assessment of whether any adjustment is warranted, as had been agreed in the 2019 PwC report.

In our view, the agreed action in 2019 PwC report has not been addressed and should not have been closed.

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[74] Options for funding WorkSafe through Budget 2019, Ministerial Briefing paper, MBIE, 18 October. 2018, page 5.

[75] WorkSafe NZ Prioritisation and Resource Allocation Review, PwC, Nov 2019, page 4.

[76] Ibid, page 21.

[77] Prioritisation and Resource Allocation – Summary of findings and actions for Strategic Baseline Review.xlsx, action 1.1, rows 2, 3 and 4.

Evaluation Capability

A key factor in identifying priority areas, programmes or initiatives, and in allocating resources, is an understanding of the effectiveness or value of WorkSafe outputs. WorkSafe has identified evaluation as a core competency at organisational, regulatory function and programme levels. It is also key in its drive to become an intelligence-led and technology-enabled regulator.

WorkSafe's Research and Evaluation (Research and Evaluation) team was established in 2014. The Research and Evaluation team currently comprises 8 FTEs – 6 Research and 2 Evaluators. Initially the Research and Evaluation work programme was structured around four higher risk sectors: Agriculture, Forestry, Construction, Manufacturing, with a focus on acute harm, and workers with greater need (i.e. poorer health and safety outcomes of Māori and Pacific workers). Over the next three years, the scope extended to Healthcare and Social Assistance, Hospitality and Accommodation and Transport, Postal and Warehousing sectors.

In recent years there has been a shift in the Research and Evaluation team's approach and thinking to researching harm: from the traditional worker/work focus (harm associated with tasks and exposures within specific sectors) to developing an understanding of the underlying causes that can increase or result in harm for workers and the degree these can be modified.

This shift has also expanded the team's value proposition from producing sector specific research products, to one whereby members of the team work more closely with stakeholders across the organisation to[78]:

a) Provide insights in relation to emergent harms and risks in the broader HSS, based on existing evidence and relevant health and safety theory;

b) Inform future decision making about resource allocation and investment in harm prevention initiatives;

c) Support the development of robust intervention logics, based on sound theory of change principles;

d) Design and implement evaluations to identify the effectiveness of WorkSafe's activities;

e) Continue building WorkSafe's Occupational Health and Safety surveillance programme; and

f) Address knowledge gaps in WorkSafe's evidence base through the undertaking and/or commissioning of new primary and secondary research.

To date, the focus of the Research and Evaluation team has been on individual programmes and initiatives. The Maramatanga reference group determines the tasking and coordination of teams generating insights and products in the monitoring and evaluation work programme. Beyond this, it appears there has been little, if any, demand to use WorkSafe's internal

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[78] WorkSafe Research and Evaluation Programme: Briefing for incoming GMs, Mark Johnson, 16 January 2021, page 5.

evaluation capability to describe the links between inputs, outputs and outcomes, or to assess the relative value of outputs, to guide resource allocation decisions.

But the building blocks are there. Item (b) could be widened to include current activities as well as initiatives or projects. Items (c) and (d) could be framed in terms of WorkSafe's regulatory role to develop the missing links between inputs-outputs-outcomes and to identify the benefits or the 'relative value' of regulatory activities in achieving outcomes. This will go some way to providing the inputs-outputs-outcomes framework needed to assess the efficiency and effectiveness of WorkSafe.

In addition, the Research and Evaluation Team has recently been published an excellent internal guide *Monitoring and Evaluation 101*[79]. It is written from a user perspective and provides examples of well-crafted logic models to support staff to develop their monitoring and evaluation plans. When this document is rolled out and used by managers across the organisation, it will go a long way towards increasing understanding of the inputs-outputs-outcomes framework and to supporting resource allocation decisions.

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[79] *Monitoring and Evaluation 101*, WorkSafe, August 2021 ISBN 978-1-98-856789-1

3. Cost Pressures

This section focusses on the question: '*What cost pressures does WorkSafe face over the next four years and do they align with its role, strategy and government priorities?*'.

Financial Overview

The financial performance over the eight years since establishment and WorkSafe's forecasts for the next ten years are summarised below (refer Appendix 13 for details):
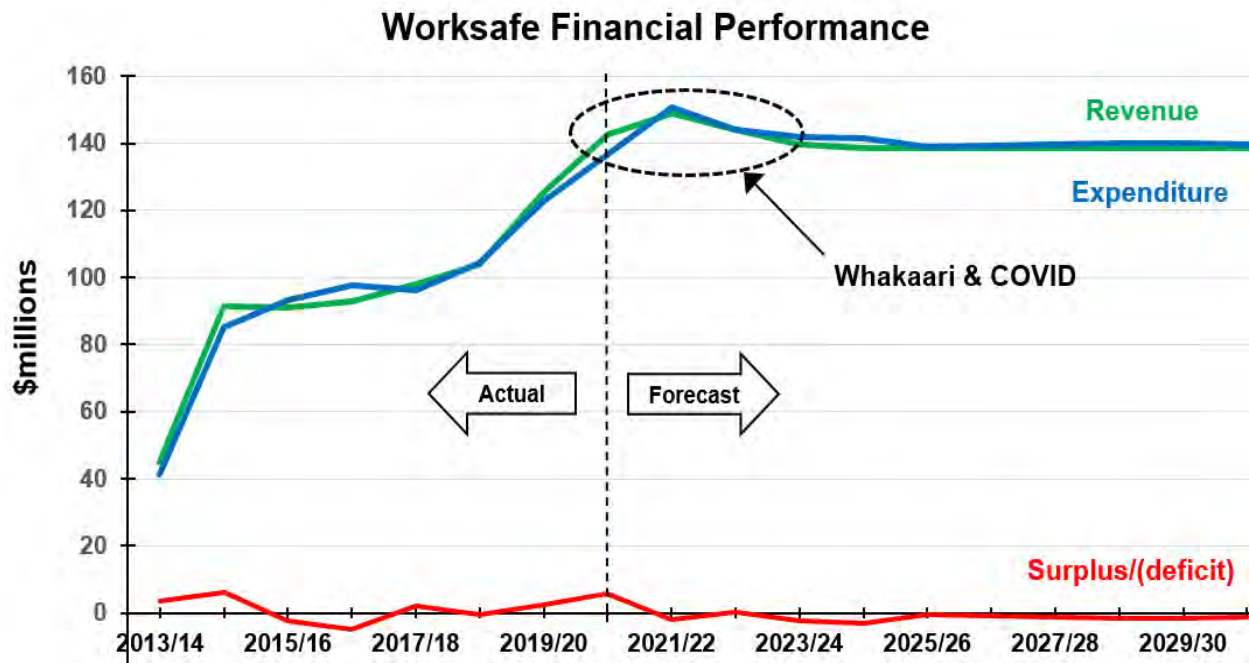
Figure 9: WorkSafe's actual and forecast financial performance 2013/14 to 2029/31

The key points from the graph are:

- Expenditure has increased by $51.5m (60%) over the seven years since establishment from $85m in the first full year of operation in 2014/15 to $137m in 2020/21. The increase is largely due to funding for joint ACC-WorkSafe projects, the Modernisation Programme and Inflation.

- WorkSafe will receive additional time-limited funding of $18.5m from 2020/21 to 2023/24 to fund investigations into the Whakaari/White Island eruption, and $5.3m from 2019/20 to 2021/22 to fund activities in response to COVID.

- Following completion of work on Whakaari in 2023/24 and Covid-19 response activities, WorkSafe is forecasting no significant changes to revenue or expenditure over the next 10 years, other than wage inflation[80].

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[80] WorkSafe forecasts include wage inflation for the next four years.

Costs

Cost by Type

The break-down of 2020/21 costs is summarised below:
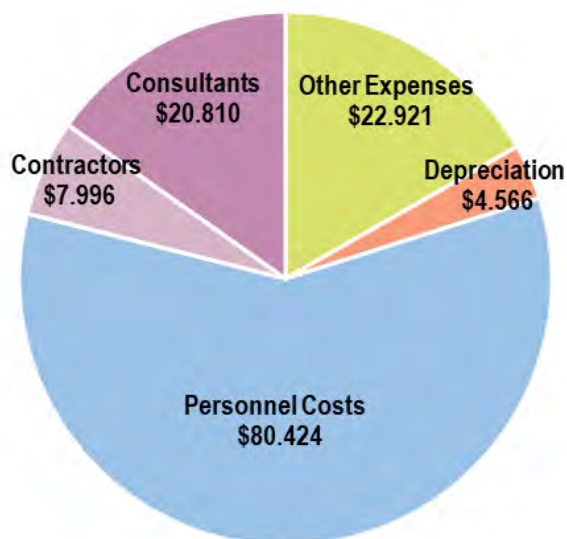
Figure 10: Expenditure by Type 2020/21

Personnel comprised the largest portion of costs totalling $80.4 million or 59% of total expenditure, followed by Contractors and consultants which totalled $28.8 million or 21%. Combined expenditure on personnel, contractors and consultants accounted for 80% of total costs.

Cost by Business Group

2020/21 costs by business group are summarised below:

	Resources (@ 30 June 21)		2020/21 Budget	
	FTEs	**%**	**$millions**	**%**
Costs				
Operations (incl ACC and Whakaari)	348	54%	64.009	47%
External Strategy & Engagement	61	9%	12.273	9%
Regulatory Effectiveness & Legal	86	13%	12.740	9%
Health and Technical Services	54	8%	8.059	6%
Corporate (IT, HR, Fin & CE)	98	15%	42.637	31%
Allowance for forecasting bias			-3.000	-2%
Total Operating Expenditure	**647**	**100%**	**136.718**	**100%**

(External Strategy & Engagement, Regulatory Effectiveness & Legal, and Health and Technical Services together: 24%)

Table 4: Resources and Budget by Group

The largest group was Operations with 47% of costs, followed by Corporate groups at 31% and other groups at 24%. In our view the size the Corporate costs at $42.6m or 31% of total

costs appears to be high. In government agencies Corporate groups are more typically around 20% of total costs. This is an area which WorkSafe may want to investigate further.

Changes in Costs since Establishment

Total expenditure has increased by $51.5m (60%) over the seven years since establishment – from $85m in 2014/15 (the first full year of operations) to $137m in 2020/21 (refer Appendix 12). The increase is largely in personnel costs ($36.2m or 69%), which reflects the overall cost structure of the organisation.

In order to identify the causes of the cost increases we analysed changes in revenue, which should (in theory) drive expenditure decisions. If we assume that there is a direct link between increased revenue and increased expenditure, then the $51.5m increase in costs can be attributed to the following causes:
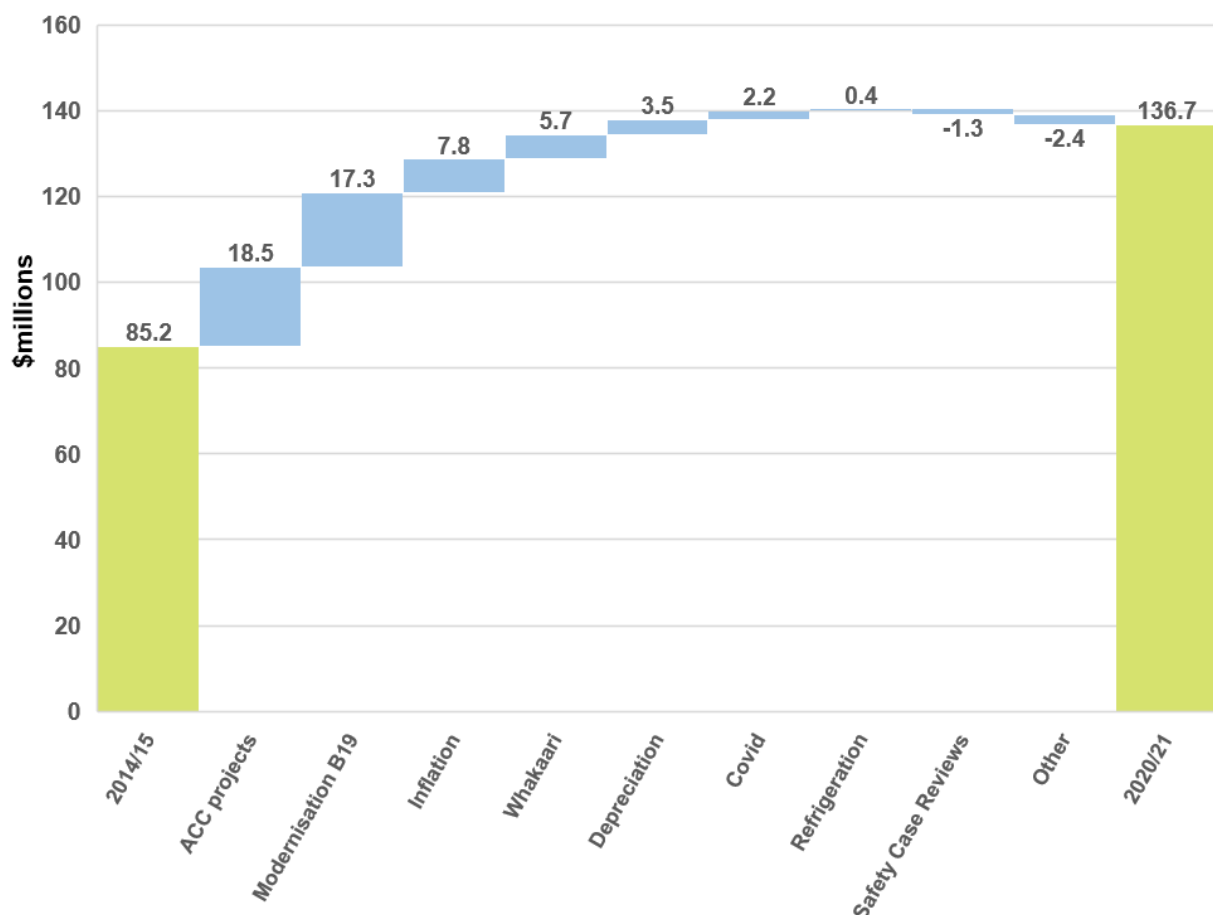
Figure 11: Change in Costs from 2014/15 to 2020/21

As shown above, the largest cost increase is expenditure on joint ACC-WorkSafe projects. In 2020/21 funding from ACC is forecast to be $19.2m which is an increase of $18.5m over 2014/15 levels. This money funds WorkSafe to implement jointly agreed injury prevention measures under the Accident Compensation Act 2001, section 264B.

Funding of $17.3m in 2020/21 was approved in Budget 2019 to fund the modernisation programme which includes the digital transformation programme and increased resources in

Legal and the Inspectorate. This funding increases to $27.1m in 2022/23 and continues into out-years.

Inflation is estimated to have increased costs by $7.8m over the seven-year period. This has largely been funded by an approved cost pressure bid in Budget 2017.

Funding of $5.7m in 2020/21 was approved in Budget 2020 to fund the authorisation function and investigations into the Whakaari/White Island eruption. Further funding for Whakaari/White Island was approved in Budget 2021 to a total of $18.5m over four years from 2020/21 to 2023/24.

Other smaller items include Depreciation and Amortisation ($3.5m), Covid-19($2.2m), Refrigeration ($0.4m), decrease in Safety Case Reviews funding (-$1.3m), and change in the operating surplus and other items (-$2.4m).

Changes in Resourcing since Establishment

With 80% of costs being personnel-related, we undertook an analysis of staffing changes in order to understand the drivers of cost changes in WorkSafe. As at 30 June 2021, WorkSafe comprises seven business groups as set out below (Operations group is further divided into five front line delivery groups):
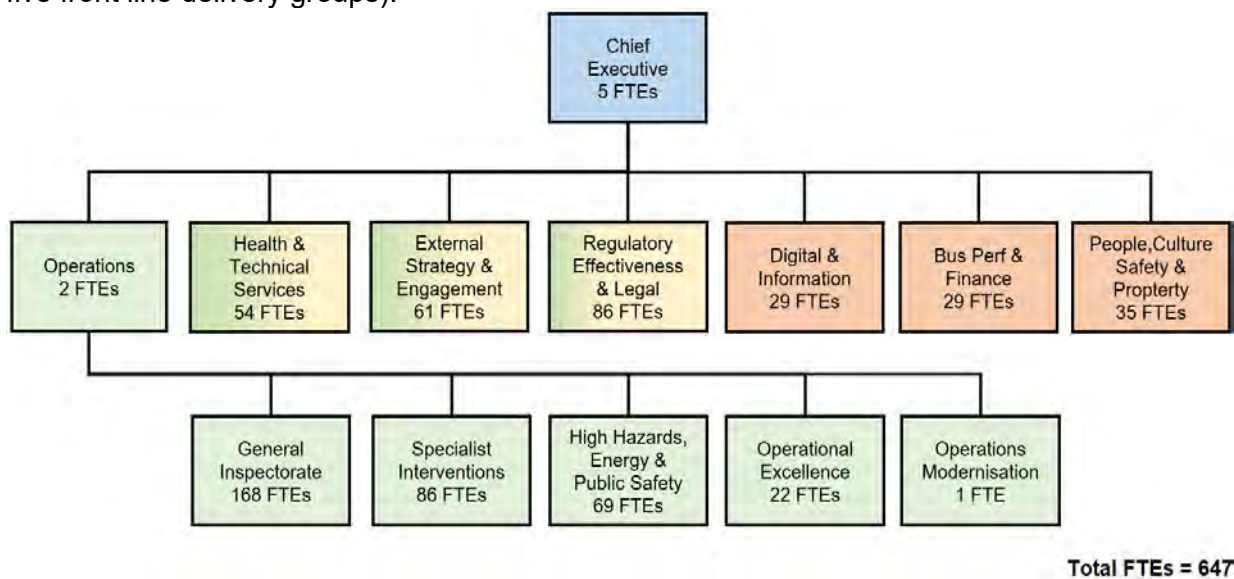
Figure 12: WorkSafe Organisation Structure at 30 June 2021

Staff Numbers

There has been a significant increase in staff numbers since establishment. In the seven years from June 2014 to June 2021 total staff increased by 72% from 383 to 657[81] FTEs as summarised below:

	June 14 FTEs	June 21 FTEs	Increase FTEs	%
Operations	242	351	109	45%
Regulatory Effectiveness & Legal	61	81	20	33%
Health and Technical Services	19	55	36	189%
External Strategy & Engagement	27	46	19	70%
People, Culture & Safety	17	38	21	124%
Business Performance & Modernisation	16	32	16	100%
Digital & Information	-	29	29	n/a
ACC & Whakaari	-	21	21	n/a
Chief Executive	1	5	4	400%
Total	**383**	**658**	**275**	**72%**

Table 5: Change in FTEs since Establishment

By virtue of its size, the largest increase in FTEs was in the Operations group. However, across the board FTEs in all business groups increased significantly. The largest proportional increase was Health and Technical Services (189%), followed by People Culture and Safety (124%), Business Performance and Modernisation (100%) and External Strategy & Engagement (70%). The combined Corporate functions[82] totalled 104 FTEs at June 2021, which was a 206% increase on June 2014. WorkSafe may want to consider whether the level of resources in the Corporate areas are appropriate for the size of the organisation.

Wage Rates

WorkSafe's median wage in June 2020 was $97,310, which was 29% higher than the public service median wage of $72,600[83]. Wage growth appears to have tracked the broader public sector, and this wage premium has remained broadly stable since 2014. We assume that it is largely attributable to the skilled nature of WorkSafe's workforce, particularly the need for technical skills and specialist industry experience. The public service median is broadly equivalent to the wages of WorkSafe's 15th percentile workers.

Wage growth in the 2020/21 year alone was high, with the median wage growing by 11%, which is likely to be well ahead of the broader public sector. This recent increase in wage growth has been partly driven by increased wages within remuneration bands. For instance, in June 2020 the wage of the average person within the Business Performance & Modernisation group was at 100% of their respective remuneration band – but has since grown to 107%.

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[81] We note that the FTEs used in our analysis differ slightly from the above chart and from other publications. This is due to the data downloads we were provided being snapshots from HR databases which may treat some personnel items (such long service leave and/or vacancies) differently.

[82] People Culture and Safety, Business Performance & Modernisation, Digital & Information and Chief Executive's Office.

[83] https://www.publicservice.govt.nz/our-work/workforce-data/annual-salary-in-the-public-service/

Similar trends are observed in the Digital & Information group, where the average wage is currently 110% of the remuneration band midpoint. This trend is illustrated below:
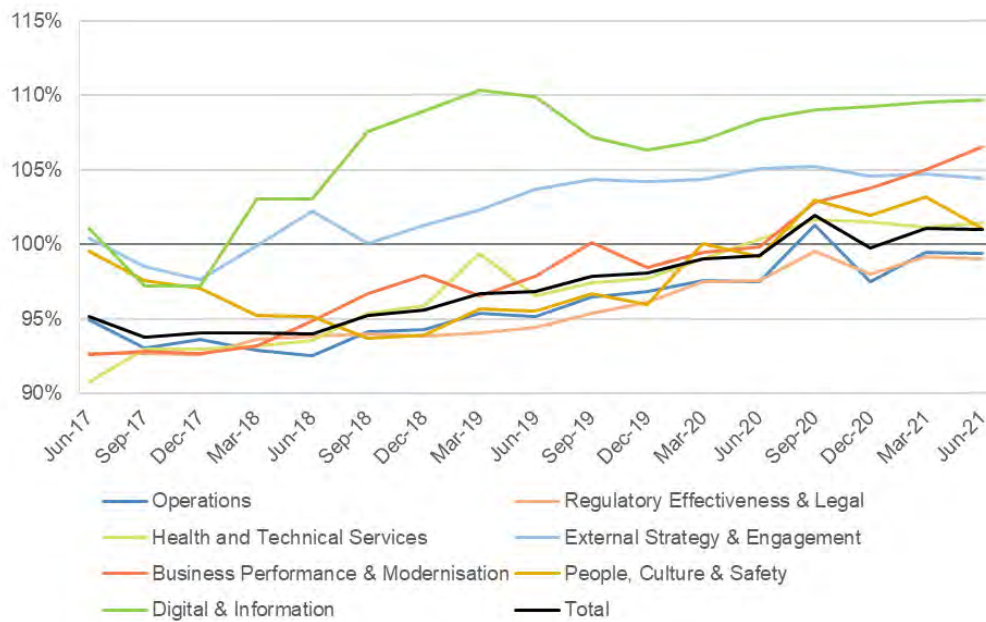
Figure 13: Average Wages Relative to Remuneration Band Midpoints

The graph shows that Digital & Information pay the highest wages relative remuneration band midpoints, but that all business groups on average are paying at or above 100% of band midpoints. Coupled with recent FTE growth, this implies that many of the new starters within the area are entering the organisation with wages above 100% of their respective remuneration bands. This is an area which WorkSafe may want to investigate further.

Attrition & Length of Tenure

High attrition and short length of tenure in the Corporate groups may create risks for the organisation. Attrition rates are summarised below:
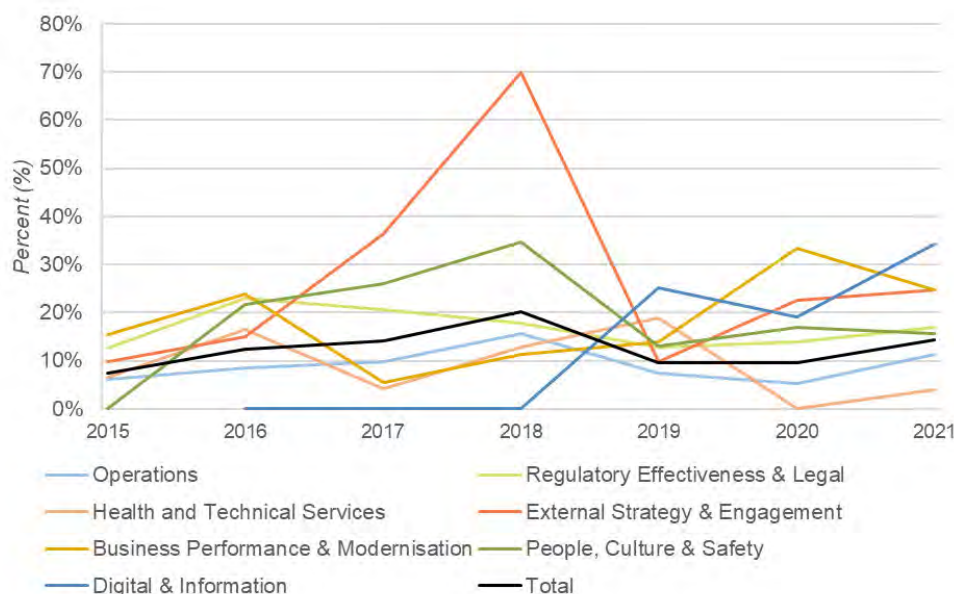
Figure 14: Attrition rate of permanent employees by business group (%)

Attrition in Corporate areas reached 25% in 2020/21, led by Digital & Information at just over 33%. In addition, as at June 2021, 58% of Corporate staff had been employed by WorkSafe for less than 12 months, with 69% of Digital & Information staff being employed within the past year. In contrast, both Operations and Health and Technical Services both have low and relatively stable attrition rates.

Contractors and Consultants

Expenditure on contractors and consultants has increased significantly over the seven years since establish from $14.5m in 2014/15 to $28.8m in 2020/21 as set out below:
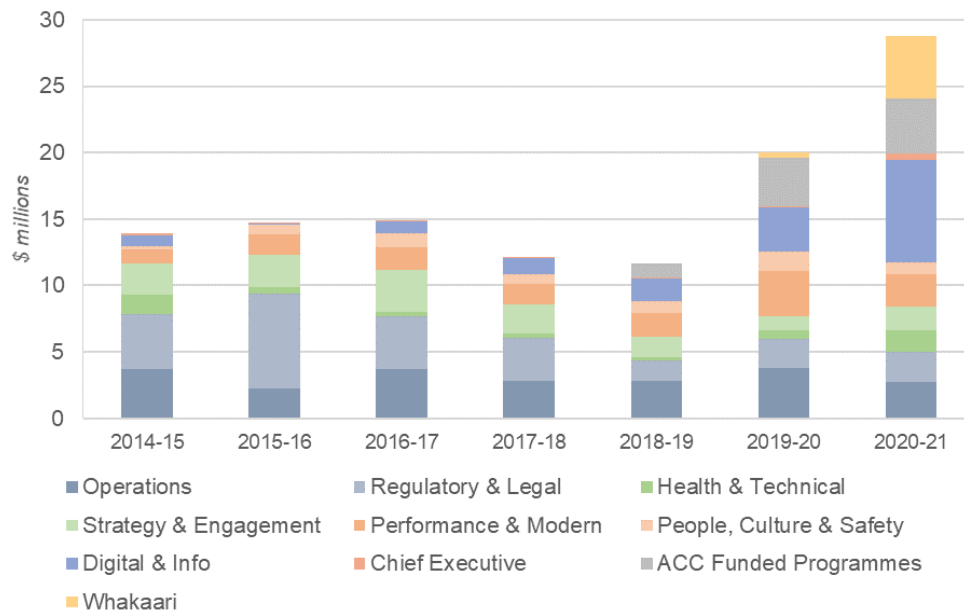
Figure 15: Expenditure on Contractors and Consultants ($m)

As shown in the graph above, the recent growth in Contractor and Consultant spend is largely driven by Digital & Information, ACC Funded Programmes and Whakaari. In 2020/21 spend on Contractors and Consultants comprised 26% of total staffing costs. Although the use of non-permanent staff could be rationalised on the basis that these areas are not business-as-usual and are time limited, funding has been agreed for at least the next 12-24 months, and it is questionable whether contractors and consultants will provide value for money relative to employing permanent or fixed-term FTEs. This is also an area which WorkSafe may want to investigate further.

Resourcing Gaps

WorkSafe advised us that it does not have sufficient resources in the following areas:

- Keeping its suite of regulatory tools and legislative instruments[84] up to date.

- Reviewing third party accreditations in the Adventure Activities sector.

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[84] As a regulatory system asset.

- The regulatory improvement programme has identified four gaps in regulatory oversight or activity: Authorisations, Exemptions, Delegations and Decision-making frameworks.

We were not provided with any analysis which quantified or valued these resourcing gaps and were advised that this work was yet to be undertaken. We note that limited information on how WorkSafe is currently using its resources and lack of an inputs-outputs-outcomes framework make it difficult to assess the extent to which these areas could be internally funded. It was therefore not possible for us to assess or confirm these resourcing gaps.

Forecasts

We expected WorkSafe to be maintaining detailed revenue and expenditure forecasts over the next 10 years which included inflation, approved funding changes, planned business changes and other cost pressures. We requested and were provided with forecasts which included wage inflation for the first four years and no other changes other than the cessation of Whakaari and Covid-19 funded work. In the forecasts, revenue settles at around $139m per year from 2023/24 on and Expenditure at around $140m per year, resulting in an operating deficit of approximately $1m per year (refer Appendix 13).

We were advised by WorkSafe Finance that the 10-year forecast shows that WorkSafe is financially sustainable – 'the ten-year forecast is tight, but achievable, if we drive efficiencies and increased financial discipline into the business; this is supported by a more stringent forecasting process in 2020/21, tightening group baselines for 2021/22, and work that is under way on enhancing reporting and accountability processes. We note that this view of financial sustainability does not align with the Chief Executive's or Executive Leadership Team's view, who have repeatedly advised us that the organisation is underfunded.

The conclusion of financially sustainability depends on the need to replace Information Technology assets. In Budget 2019 Cabinet agreed to a repayable capital loan of $31.57m to fund the Digital and Information programme. This investment will be capitalised and depreciated. Over the 10-year period, WorkSafe is forecasting to spend $25.4m less on asset replacement than depreciation expense. This funding will be used partly to repay the capital loan, and partly to fund operating costs at a rate of around $3.0m per year. This means that there will be $25.4m less cash available at the end of the 10-year period to replace the Information Technology assets approved in Budget 2019.

WorkSafe appears to be comfortable with this approach because, while the Digital and Information Programme represents a significant initial investment in Information Technology, they do not expect to have to do another major Information Technology replacement on this scale. They have advised that ongoing capital replacement is planned to be lower than forecast depreciation flows which include the Digital and Information programme. However there are two risks with this approach – at the end of the 10-year life of the Digital and Information Programme assets:

(a) The assets may need to be replaced but there may be insufficient cash reserves to fund the replacement; and

(b) Depreciation flows from these assets will cease and there may be insufficient funding to meet the ongoing $3m shortfall in operating costs.

If either of these risks eventuate, WorkSafe may need to seek additional funding through future budget bid processes.

Cost Pressures

As noted above, WorkSafe is forecasting no significant changes to revenue or expenditure over the next 10 years, other than wage inflation for the first four years changes and the cessation of Whakaari and Covid-19 work. However, at a minimum, we would expect to have seen ongoing price and wage inflation and cost pressures from increased market activity included in the forecast. We have also been advised of cost pressures in other areas and that WorkSafe intends to submit four funding bids in Budget 2022 (Plant and Structures, Covid-19, Confidentiality and Confidentiality . In order to provide an estimate of possible cost pressures, we have consolidated all this information below (refer Appendix 14):

1. Market Activity

We would expect there to be a link between labour market activity and core regulatory activities provided by the General Inspectorate and High Hazards/Energy/Public Safety groups. Proxies for labour market activity might be number of workforce participants, number of PCBUs, or forecast economic growth.

The WorkSafe Regulatory Intelligence Team (RIT) has been looking at using economic data to forecast demand for WorkSafe services and published its first forecast report in December 2020[85]. The paper develops forecasts of Potentially Notifiable Injuries (PNIs) based on Treasury Gross Domestic Product (GDP) and unemployment rate forecasts in the December 2020 Half Year Economic and Fiscal Update (HYEFU 2020). RIT also updates the forecasts to reflect improved economic conditions since the HYEFU 2020. The PNI forecasts are summarised below – we have highlighted the adjusted Treasury Baseline Scenario (i.e. mid-point estimate) which we will use for estimating cost pressures:

	2019	2021	2022	2023	2024
Treasury Upside Scenario (Dec 20)	100	-14%	-9%	-6%	
Treasury Baseline Scenario (Dec 20)	100	-16%	-12%	-9%	-6%
Treasury Downside Scenario (Dec 20)	100	-18%	-14%	-8%	
Adjustment for improved eco conditions	100	5%	5%	5%	5%
Adjusted Treasury Baseline Scenario	100	-11%	-7%	-4%	-1%

Source: WorkSafe Demand Forecast 2021-24, WorkSafe December 2020

Table 6: WorkSafe Regulatory Intelligence Team PNI forecasts

Under all three scenarios Potentially Notifiable Injuries (PNIs) are forecast to remain below 2019 levels for at least the next four years. Based on these forecasts we should not expect any cost pressures due to labour market activity in the General Inspectorate and High Hazards/Energy/Public Safety groups until 2025. From 2025 forward, in the absence of other information, we have assumed that the costs of the General Inspectorate and High

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[85] WorkSafe Demand Forecast 2021-24, WorkSafe Regulatory Intelligence, December 2020.

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Hazards/Energy/Public Safety groups will increase by 1.15% per annum[86]. Based on this assumption we estimate cost pressures due to market activity to be $2.4m over the 10-year time horizon.

2. Wage and Price Inflation

As noted above, WorkSafe forecasts include wage inflation only, for the first four years. To estimate potential inflation pressures we have used wage and price inflation assumptions from Treasury's Budget Economic and Fiscal Update 2021 forecast[87] - wage inflation of 3.02% per annum and CPI of 2.0% per annum. Based on these assumptions we estimate wage and price inflation pressures to be $27.2m over the 10-year time horizon.

3. Regulatory Reform Programme

The regulatory reform programme includes three key areas of change over the next 10 years (refer Appendix 15 for details):

- **Plant and Structures (possible 2022 Budget Bid)** – funding will be sought in Budget 2022 to develop and implement new regulations for plant and structures. The 2022 Budget Bid template requests funding for operating expenditure of $21.354m over four years from 2022/23 to 2025/26 and capital of $1.5m.

- **Hazardous Substances** – additional funding may be required to review and update hazardous substances regulations. This is expected to be significantly larger than the plant and structures work. Early indicative costing suggests costs of around $25-$30m. We have assumed that this would follow the Plant and Structures review and phased the costs over 3 years from 2025/26 to 2027/28.

- **Hazardous Work** – additional funding may also be required to review and update hazardous work regulations. Initial scoping has not yet been undertaken, but we were advised that amount of work involved would be similar to Plant and Structures. This would put the indicative whole of life cost of implementation at around $20m. We have assumed that this would follow the Hazardous Substances review and phased the costs over 3 years from 2028/29 to 2030/31.

4. Other Regulatory Changes

WorkSafe has identified four other areas of regulatory change likely to incur additional work and cost (refer Appendix 15 for details). These include:

- **Covid-19 (possible 2022 Budget Bid)** - funding will be sought in Budget 2022 to scope, recruit, train induct and support a cohort of 30 inspectors that focuses on ensuring businesses and organisations comply with current and future COVID-19

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[86] Based on the forecast average growth annual growth in the labour force 2025/26-2030/31, Fiscal Strategy Model – BEFU 2021, The Treasury 20 May 2021, https://www.treasury.govt.nz/publications/fsm/fiscal-strategy-model-befu-2021

[87] Fiscal Strategy Model – BEFU 2021, The Treasury 20 May 2021, https://www.treasury.govt.nz/publications/fsm/fiscal-strategy-model-befu-2021

controls. The 2022 Budget Bid template requests funding for operating expenditure of $7.248m in 2022/23, $6.990m in 2023/24 and $7.043m in 2024/25 and outyears.

- Confidentiality

- *Regulatory Improvement (Ngā Paiaka)* – changes may be required to Authorisations, Exemptions, Delegations and Decision-making frameworks. While this work is yet to be scoped, WorkSafe has recognised these are areas that need to be prioritised.

- *Adventure Activities* – changes to Health and Safety at Work (Adventure Activities) Regulations may be required following the review into the Whakaari/White Island eruption. While this work is yet to be scoped, WorkSafe has recognised this as an area that needs to be prioritised.

5. Modernisation Programme

WorkSafe received additional funding for the modernisation programme in Budget 2019. We have been advised that cost pressures may arise from changes to WorkSafe operations coming out of eTOM and other service design work, but this has not been quantified.

Forecast Cost Pressures (estimated) over the next 10 years

Estimated cost pressures total $200.1m over the 10-year time horizon, of which $123.1m is possible 2022 Budget Bids which have yet to be considered by MBIE or Treasury. The cost pressures are summarised below (refer Appendix 14 for details):

$000s	10-Year Forecast										Total
	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	10-Years
1 Market Activity	0	0	0	0	384	389	393	398	402	407	2,372
2 Wage & Price Inflation	1,082	964	890	882	3,639	3,740	3,844	3,950	4,060	4,172	27,222
3 Regulatory Reform Programme	0	9,152	5,471	3,578	12,320	9,167	9,167	6,667	6,667	6,667	68,854
4 Other Regulatory Changes	0	11,488	11,230	11,283	11,283	11,283	11,283	11,283	11,283	11,283	101,699
5 Modernisation Programme											unknown
Total Cost Pressures	**1,082**	**21,604**	**17,591**	**15,743**	**27,626**	**24,578**	**24,686**	**22,297**	**22,411**	**22,529**	**200,147**
Possible 2022 Budget Bids	0	20,640	16,701	14,861	14,436	11,283	11,283	11,283	11,283	11,283	123,053
(included in above)											

Table 7: Forecast Cost Pressures

Alignment of Cost Pressures to Role, Strategy and Government Priorities

There is clear alignment of some cost pressures to WorkSafe's regulatory role, strategy and government priorities. For example, the Plant and Structures proposed budget bid aligns with its regulatory role to *make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes* [88]. WorkSafe's COVID-19

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[88] WorkSafe New Zealand Act 2013, sec 10 (b).

proposed budget bid aligns to the Government's priority of *Keeping New Zealanders safe from COVID-19* as it has been assigned an enforcement role under the the COVID-19 Public Health Response Act 2020. However, as outlined above, the lack of a clear inputs-outputs-outcomes framework makes it difficult to confirm whether these cost pressures can be funded internally, or to identify possible trade-offs.

WorkSafe advised us that there is minimal funding available for these budget bids or other cost pressures and that the opportunities for trade-offs are limited because reprioritisation of funding has already occurred. They further advised that they are continually making prioritisation and trade-off decisions and have done so for many years. They do this as a normal part of their business planning budget process, in a way that is reasonably tactical, and then relying on periodic reviews of overall funding to deal with major shifts in funding requirements.

We have been surprised by these comments. Throughout the review we were advised that resources (FTEs and funding) are not allocated to activities or outputs, and that activities and outputs are not costed. WorkSafe has been unable to provide us with the resource levels of activities which might be used to inform resource allocation and prioritisation decisions. We were also advised during the review that decisions to prioritise activities or initiatives are made by ELT as part of the strategic planning process. General Managers then make decisions to reallocate resources within their existing budgets and organisation structures as part of their business planning processes. The allocation of staff and other resources is therefore largely determined by the existing organisation structure rather than the effectiveness or relative value of different regulatory activities. Given this, it is not possible to identify how prioritisation and trade-off decisions are made and the extent to which these are made in a robust, systematic manner.

It is not possible to comment on whether the cost pressures will impact on WorkSafe's achievement of outcomes, or the extent to which resources can be shifted to address cost pressures without compromising outcomes.

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4. Funding

This section considers '*Options to manage within different funding paths, and advice on the best path*'.

Funding Sources

WorkSafe is funded from three main sources: Crown Revenue; ACC funded programmes; and Other Revenue (charges for services and interest), as set out below:

	2020/21 Forecast	
	'$000s	%
Crown Revenue		
Working Safer Levy	114,344	80%
Major Hazard Facility Levy	2,690	2%
Energy Safety Levy	4,414	3%
Total Crown Revenue	**121,448**	**85%**
ACC Funding	**19,154**	**13%**
Other Revenue		
Safety Case Reviews	412	0%
Interest Revenue	397	0%
Other	990	1%
Total Other	**1,799**	**1%**
Total Revenue	**142,401**	**100%**

Table 8: Forecast Revenue 2020/21

Crown Revenue

Crown Revenue is the primary source of funding for WorkSafe and is set by Government each year through the appropriations process. This funding is cost recovered from three levies:

- **Health and Safety at Work Levy** – a levy on all businesses which is set under the Health and Safety at Work Act 2015 to recover the costs of health and safety at work activity of WorkSafe New Zealand, Maritime New Zealand (MNZ) and Civil Aviation Authority (CAA). The levy is currently set at 8c per $100 of liable payroll or earnings[89] and is collected by ACC on behalf of the Crown. Cabinet uses this levy revenue to recover the costs of the work-related health and safety activity of the three regulators. Funding is appropriated to WorkSafe through Vote Labour Market, and to MNZ and CAA through Vote Transport. MBIE tracks the net balance of levy receipts against agency appropriations in a notional memorandum account. The indicative balance at 30 June 2021 is $22m, dropping towards a zero balance over the next two years due to the impacts of Covid-19 on earnings and recent increases in agency appropriations. Levy revenues are determined by payroll or earnings levels, which in turn are related to wage rates and the size of the workforce.

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[89] The levy is set under the Health and Safety at Work (Rates of Funding Levy) Regulations 2016.

- ***Energy Levies*** – levies on electricity and gas industry operators are set under the Energy (Fuels, Levies, and References) Act 1989 to recover the cost of information dissemination for electricity and gas consumers, and the cost of promoting and contributing to the safe supply and use of electricity and gas. Levies are set on electricity and gas energy sold (per kilowatt hours or gigajoule) and are collected by MBIE on behalf of the Crown. Funding is appropriated to WorkSafe through Vote Labour Market and MBIE tracks the net balance of levy receipts against the agency appropriation in a notional memorandum account. The balance at 30 June 2020 was a $0.724m *deficit*. Year on year changes in levy receipts are driven by price inflation and energy usage.

- ***Major Hazard Facility Levy*** – annual levies are set under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016. Levies are payable by operators of major hazard facilities to meet the costs of the Major Hazard Facility regulatory regime. There are a range of levies which depend on the size and complexity of the facility. Levies are collected by WorkSafe and paid to the Crown. WorkSafe receives an appropriation for its major hazard activity through Vote Labour Market. WorkSafe tracks the net balance of levy revenue against agency appropriation in a memorandum account. The balance at 30 June 2020 was $2.755m. Levy revenues vary with the number and nature of Major Hazard Facilities.

ACC Funding

ACC funding is provided to WorkSafe under section 264B of the Accident Compensation Act 2001 (ACA) to implement jointly agreed injury prevention measures. The Act requires WorkSafe and ACC to have an agreed workplace injury prevention action plan in place which outlines the injury prevention measures that will be undertaken by WorkSafe and the Corporation (jointly or separately). The plan must specify how the measures[90]:

- are likely to result in a cost-effective reduction in actual or projected levy rates in the Work Account; and

- are consistent with the Health and Safety at Work Strategy published under section 195 of the Health and Safety at Work Act 2015; and

- are consistent with the Corporation's priorities for injury prevention measures relating to the Work Account.

The plan also identifies the amount of funding to be paid by one agency to fund programmes undertaken by the other agency. To date funding has been from ACC to WorkSafe to fund programmes provided by WorkSafe. This funding is sourced from the ACC Work Account.

Within WorkSafe, most of the ACC funding is used by the External Strategy and Engagement group, but it also funds projects in Regulatory Effectiveness and Legal, Health & Technical Services and some activities in Operations. Most of the funded positions are fixed term, although ACC does fund some permanent positions.

The current arrangements appear to be an issue for both WorkSafe and ACC. WorkSafe outlined three key issues: difficulty in meeting return on investment targets expected by ACC;

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[90] Accident Compensation Act 2001, section 264B(2)(a)

arrangements preventing WorkSafe targeting funding at the interventions it considered to be most effective; and lack of certainty around long-term funding. WorkSafe thought that ACC had a short-term focus on delivery of benefits which does not reflect the long-term nature of many of its interventions. WorkSafe strongly advocated that it should receive the funding direct rather than through ACC, which would give it the ability to decide how and when it should be spent. We understand that a case for change (developed jointly by WorkSafe and ACC) has been discussed with the Minister.

ACC also commented on the low rates of return on WorkSafe projects, which it thought might be partly due to the difficulties in measuring the benefits of workplace injury prevention projects. ACC's view was that the delivery of WorkSafe projects should not be an ACC accountability and that monitoring these projects incurred additional costs for ACC but provided little benefit. They thought that activities funded by ACC tended be treated as an 'add-on' by WorkSafe rather than core business. ACC supported the view that WorkSafe should be funded direct for injury prevention projects, although they thought the funding should be from the Working Safer Levy rather than the ACC levy.

Confidentiality

Confidentiality

Confidentiality

Other Revenue

Other Revenue comprises:

- *Safety Case Reviews* – user charges to offset the cost of Major Hazard Facility case reviews. Safety Cases are Safety Management Plans completed by large entities in the Major Hazard Facilities and Petroleum & Geothermal sectors, which are required by regulation to be completed typically on a 5-year cycle and are subject to review and

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[91] $19.2m or 13% of WorkSafe's total revenue in 2020/21

endorsement by WorkSafe. Costs and charges are tracked by WorkSafe in a memorandum account.

- *Interest* – on cash and cash equivalents.

- *Other Revenue* - includes fees for certifications and approvals, court costs, rent from sublease, ACC injury claims, travel rebates, insurance recoveries and other miscellaneous items.

The sources of funding outlined above put some restrictions on how funding should be spent. We were unable to confirm whether funding received for specific purposes was actually spent as intended. Given that there is no output or activity costing, it is unlikely that WorkSafe is able to prove that funding has been spent as intended.

However we note that WorkSafe operates memorandum accounts [92] to track cumulative surpluses/(deficits) on Major Hazard Facilities Levies, Safety Case Reviews, Refrigeration Licensing and COVID-19 response. Memorandum account balances are audited, so we can be confident that revenue from these sources is being spent largely as intended by the underlying legislation.

WorkSafe's Strategy to fund Cost Pressures

We have been advised that WorkSafe has a two-step strategy to meet these costs pressures:

1. *Realising Efficiencies* – inflationary cost pressures will be met by driving efficiencies and increased financial discipline into the business.

2. *Budget Bids* – operational changes from new and developing initiatives will be met by requesting budget bids when the nature and cost of the changes becomes clear. We were advised that this will require clear communications and a no surprises approach with MBIE, the Minister and other stakeholders.

This strategy will result in repeated Budget bids. WorkSafe is unlikely to be able to manage cost pressures by realising efficiencies due to the absence of a clear framework to guide resource allocation decisions. WorkSafe has advised that ongoing Budgets bids are likely because expectations on the regulator are increasing in line with the size of its mandate and areas of operation.

In addition, while WorkSafe's core regulatory activities are largely driven by labour market activity, it is funded through appropriations which are fixed, with no direct link to levy revenue. Although core regulatory activities may not be directly linked to levels of labour market activity, it is expected there will be some positive corelation. This means that WorkSafe will need to periodically request appropriation increases if its regulatory activity is to keep pace with a growing labour market.

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[92] Memorandum accounts track cumulative surpluses/(deficits) on services provided that are intended to be cost recovered from third parties through fees, levies, or charges. The balance of each memorandum account is expected to trend towards zero over time.

Appendices

Appendix 1: Legislative Roles and Responsibilities

WorkSafe New Zealand Act 2013

WorkSafe was established under section 5 of the WorkSafe New Zealand Act 2013 (WorkSafe New Zealand Act 2013) and is a Crown Entity for the purposes of the Crown Entities Act 2004.

WorkSafe's main objective is <u>to promote and contribute to a balanced framework for securing the health and safety of workers and workplaces</u> (section 9(1)). An additional objective is to promote and contribute to the safe supply and use of electricity and gas in New Zealand (section 9(1A)).

WorkSafe has sixteen functions under section 10 of the Act:

1. advise on the operation of the work health and safety system, including co-ordination across the different components of the system

2. make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes

3. monitor and enforce compliance with relevant health and safety legislation

4. publish information about its approach to enforcing compliance and its performance standards for completing investigations

5. make recommendations about the level of any funding (including fees or levies) that WorkSafe New Zealand requires to effectively carry out its functions

6. develop codes of practice

7. develop safe work instruments

8. provide guidance, advice, and information on work health and safety

9. promote and support research, education, and training in work health and safety

10. collect, analyse, and publish statistics and other information relating to work health and safety

11. engage in, promote, and co-ordinate the sharing of information

12. foster a co-operative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to work health and safety

13. foster a co-operative and consultative relationship with the Environmental Protection Agency

14. promote and co-ordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient and effective way

15. any other functions or powers conferred on WorkSafe by or under any other enactment

16. any additional function that the Minister directs.

Health and Safety at Work Act 2015

The purpose of the Health and Safety at Work Act 2015 is set out in section 3 - <u>to provide for a balanced framework to secure the health and safety of workers and workplaces</u> by:

(a) protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant; and

(b) providing for fair and effective workplace representation, consultation, co-operation, and resolution of issues in relation to work health and safety; and

(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting PCBUs and workers to achieve a healthier and safer working environment; and

(d) promoting the provision of advice, information, education, and training in relation to work health and safety; and

(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

(f) ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under this Act; and

(g) providing a framework for continuous improvement and progressively higher standards of work health and safety.

Section 3(2) states:

In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.

Health and Safety at Work Act 2015 identifies three key players in the Health and Safety System – PCBUs, Workers, and the Regulator:

- PCBU[93]s have the primary duty of care for healthy and safe workers (sec 36) and an officer of the PCBU must ensure it complies with this obligation (sec 44);

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[93] Person Conducting a Business or Undertaking, Health and Safety at Work Act 2015, section 17

- Workers and other persons must take reasonable care for their own health and safety, their impacts on others, and comply with H&S instructions (sec 45 & 46); and

- WorkSafe is the regulator (sec 189) and must monitor and enforce compliance with relevant health and safety legislation[94].

Health and Safety at Work Act 2015 does not specify the role and functions of the Regulator but does set out a wide range of powers for the Regulator across many sections. The act also prescribes the purposes for which regulations may be made (sec 211) which include:

- Duties and obligations relating to work health and safety on PCBUs, workers, and other persons at workplaces

- Notifiable events

- Plants, substances, or structures

- Protection and welfare of workers and other persons

- Hazards and risks

- Records and notices

- Authorisations

- Identity cards

- Review and appeal of decisions

- Mining sector

- Exemptions

- Offences and penalties

- Infringement offences

- Fees and charges

- Forms

Health and Safety at Work Act 2015 also sets out regulations relating to Hazardous Substances (sec 212); Armed Forces (sec 213); Worker Engagement, Participation and Representation (sec 214); and Levies (sec 215). This listing is significant because it sets out the range of regulatory actions which WorkSafe must undertake.

Functions and Duties under other Acts

1. Accident Compensation Act 2001

ACC and WorkSafe must have an injury prevention action plan which must outline all workplace injury prevention programmes that will be undertaken by ACC and WorkSafe (jointly or separately) (section 264A).

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[94] WorkSafe New Zealand Act 2013, sec 10(c).

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The Act also provides for injury prevention measures undertaken by WorkSafe and funded by Corporation or jointly undertaken (section 264B).

The Act requires ACC to provide information to WorkSafe to carry out its functions under any provisions of the relevant Acts (section 286).

2. Crown Minerals Act 1991

WorkSafe must consider and approve applications for mining permits (section 29A).

Exercise of a mining permit is conditional on authorisation by WorkSafe (section 33A).

3. Electricity Act 1992

An additional objective of WorkSafe is to promote and contribute to the safe supply and use of electricity and gas in New Zealand. WorkSafe's functions and powers in relation to this objective for electricity are set out in the Electricity Act 1992: to carry out such inquiries, tests, audits, or investigations as may be necessary to determine whether a person is complying with this Act (section 5(1a)); to take all such lawful steps as may be necessary to ensure the safe supply and use of electricity (section 5(1b)). These powers extend to any place electricity is produced, supplied, installed or used.

4. Gas Act 1992

WorkSafe's functions and powers in relation to promoting and contributing to the safe supply and use of gas are set out in the Gas Act 1992: to carry out such inquiries, tests, audits, or investigations as may be necessary to determine whether a person is complying with this Act (section 6(1a)); to take all such lawful steps as may be necessary to ensure the safe supply and use of electricity (section 6(1b)). These powers extend to any place electricity is produced, supplied, installed or used.

5. Hazardous Substances and New Organisms Act 1996

WorkSafe is responsible for enforcing the provisions of this Act in respect of hazardous substances in any workplace (section 97(1)(a)), and for ensuring that the provisions of this Act are enforced in, on, at, or around any distribution system, gas installation, or gas appliance (section 97(1)(b)).

6. Railways Act 2005

WorkSafe must be consulted on each proposed safety case for rail activities (as defined by section 30 of the Act) prior to approval by the Director of Land Transport (section 32(1)).

Appendix 2: The Health and Safety System

Source: The Report of the Independent Taskforce on Workplace Health & Safety, April 2013, page 44.

Appendix 3: WorkSafe's Role in the Health and Safety System

WorkSafe's regulatory role and functions in New Zealand's Health and Safety System as set out in the WorkSafe Act (2013) and Health and Safety at Work (Act 2015) are summarised below:
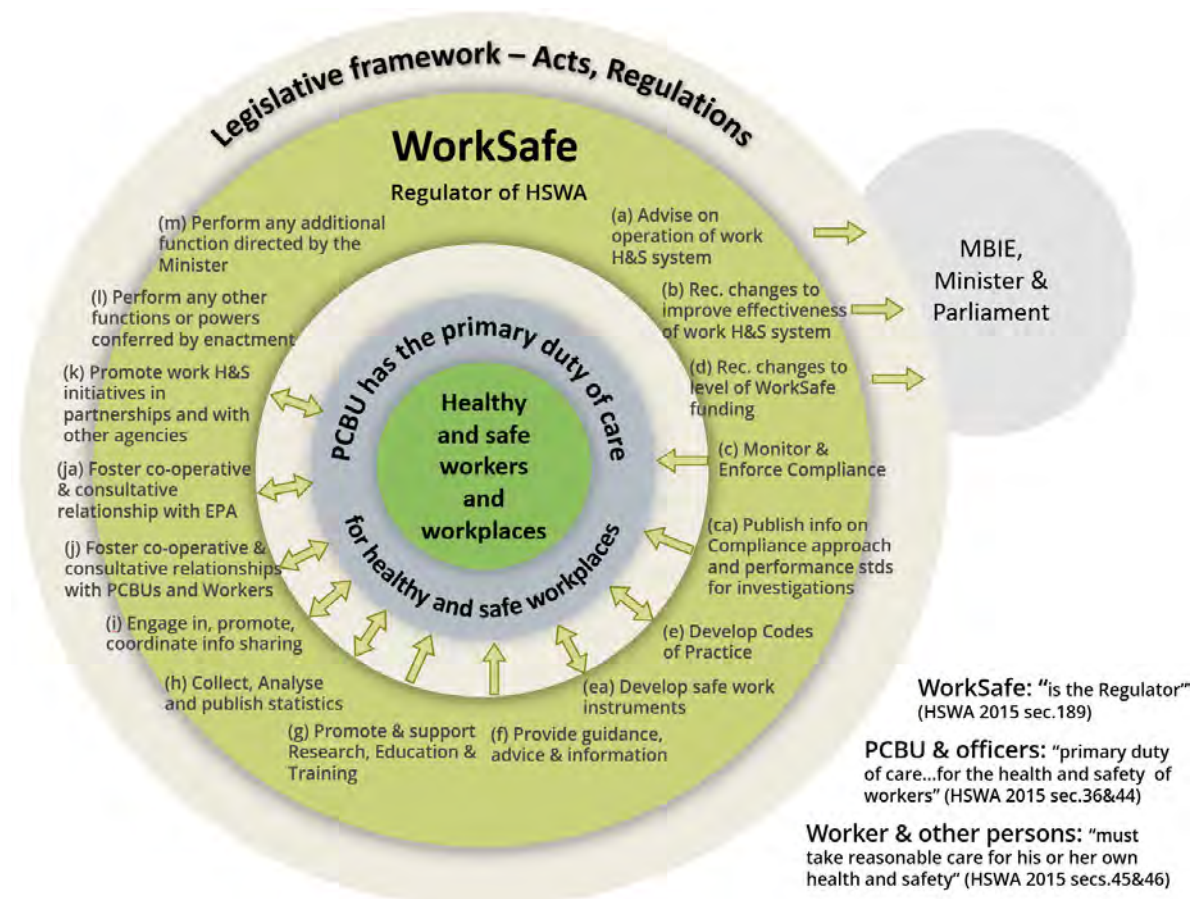
Figure 16: WorkSafe's Role in NZ's Health and Safety System

Healthy and safe workers and workplaces are at the centre of the system. PCBU[95]s have the primary duty of care for healthy and safe workplaces and WorkSafe is responsible for ensuring that PCBUs meet their duty of care by complying with their legislative responsibilities.

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[95] In this context we mean every party that is accountable for health and safety in workplace. This includes PCBUs, officers and other duty holders.

Worker engagement and participation is a key component of the system[96]. Workers are encouraged to get involved and a framework exists to support workers in having a say on matters of health and safety that affect them, without fear of repercussions. Workers may elect a health and safety representative and request establishment of a health and safety committee[97]. These parties have defined obligations and powers.

An important intervention for workers is the provisional improvement notice (PIN). If a health and safety representative reasonably believes that a person is contravening, or is likely to contravene, a provision of the Health and Safety at Work Act 2015 or regulations, the representative may issue a PIN. The PIN requires the person to remedy the contravention, or to prevent it from occurring, or to make changes to things or activities which are likely to cause a contravention[98]. Health and safety representatives also have the power to direct unsafe work to cease[99].

Interactions across the Health and Safety System which reflect WorkSafe, PCBUs and Workers are set out below:

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[96] Health and Safety at Work Act 2015, part 3.

[97] Health and Safety at Work Act 2015, sections 62 and 66.

[98] Ibid, section 69.

[99] Ibid, section 84.
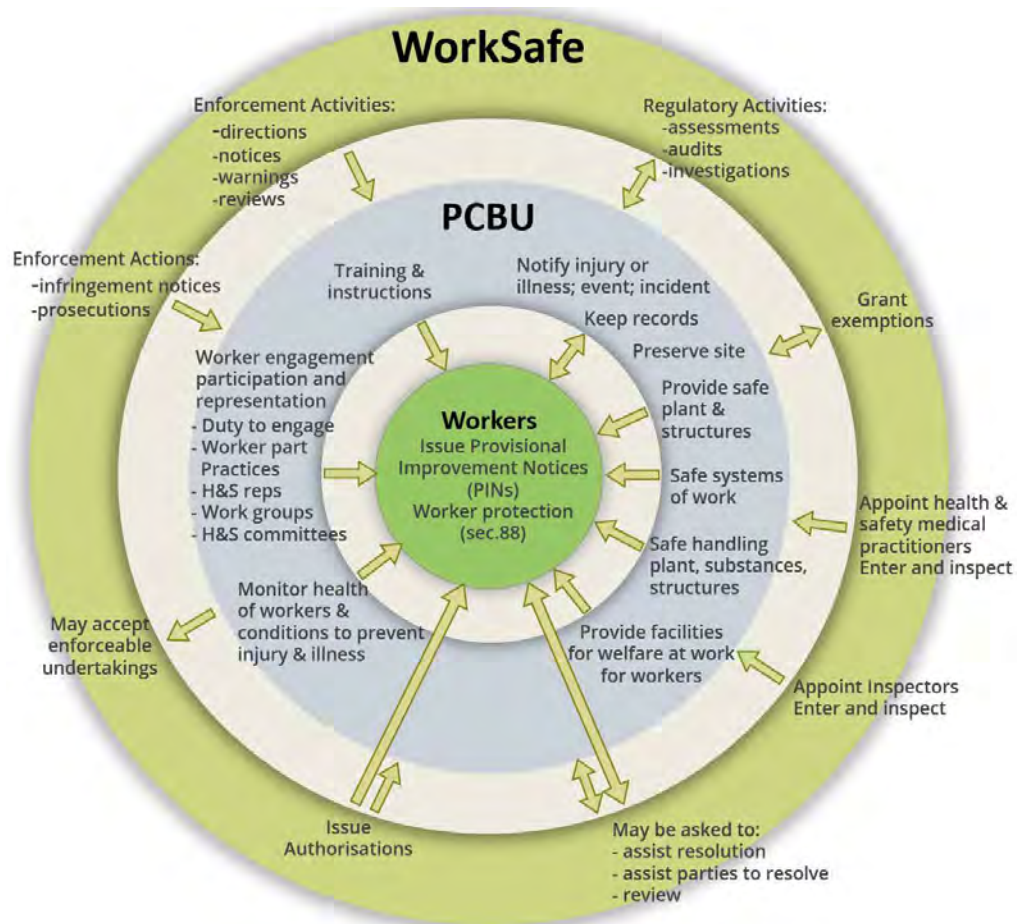
Figure 17: Interactions across the Health and Safety System

Appendix 4: How We Regulate

WORKSAFE
Mahi Haumaru Aotearoa

HSWA

August 2021

How we regulate

This policy's purpose

This policy sets out how we regulate the work health and safety system and the energy safety system – our health and safety system. The policy includes:

– our regulatory approach
– what people can expect from us as a regulator.

How We Regulate is our primary policy. It provides the foundation for all our other policies.

Our regulatory approach

We operate under a mixed model approach aligned to a really responsive risk-based framework.

A mixed model approach means using the best intervention or regulatory strategy to manage a risk or make the most of an opportunity.

Applying really responsive risk-based regulation means we are responsive to the system in which we operate, and we focus primarily on risk within our health and safety system.

Being really responsive means when we plan interventions, we consider:

– our regulated community's behaviours and attitudes toward health and safety
– our constraints as a regulator
– how well we're managing our regulatory risks
– how our health and safety system is changing over time.

We use risk-based analysis to assess our health and safety system's performance, identify and prioritise risks, allocate resources, and make effective decisions.

What we mean by risk

When we talk about risk, we mean either:

– **Regulatory risk**
These are the risks to us achieving our regulatory objectives, which are set in legislation. This is also known as "political risk" because if we fail to achieve our regulatory objectives people will lose confidence in us as a regulator.

or

– **Work health and safety and energy safety risks**
These are risks to workers and others arising from the way work is carried out, and risks to the safe supply and use of electricity and gas.

Our regulatory approach helps us balance our resources between the two types of risk. Maintaining the balance is an ongoing task because when the risk landscape changes, we may need to change what we do and how we do it.

Although we see the two types of risk as distinct, we acknowledge there is a strong relationship between them. For example, if we mismanage work health and safety and energy safety risk at a system level this will create regulatory risk for us.

How we implement our regulatory approach

Our enterprise target operating model (eTOM) describes how we implement our regulatory approach. It's attached in Appendix A. We align all our policies, interventions, and activities to our eTOM.

We put harm prevention at the heart of what we do in three ways.

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1 We focus on:

Seeing the big picture

- We acknowledge it's not possible to eliminate all risk.
- We pursue the highest level of protection reasonable for workers and other people affected by risks arising from the way work is carried out.

Focusing on the value we add

- We act where we think we're uniquely placed to make a significant difference to how work health and safety and energy safety risks are managed.
- We're clear about what we will and won't do, and why.

Building health and safety capability

- We encourage everyone who can help prevent harm to play their part and build their risk management capability.
- We support workers to be represented, engaged, and to participate.

Striving for excellence

- We keep an eye to the future to identify emerging risks in our health and safety system.
- We improve and adapt as our focus and strategic direction change.

2 We make positive change happen by:

Being a behaviour change agent

- We encourage people to see a role for themselves in improving health and safety.
- We understand the most effective ways to influence people, businesses and services, and sectors.

Working with and through others

- We work with other agencies, our social partners, iwi, and sector and industry bodies to achieve our regulatory objectives.
- We identify who has a role to play, how they can help us influence change, and ask them to get involved.

Strengthening our health and safety system's integrity

- We monitor and assess our system's performance to see what needs to change and support that change.
- We advise on whether our legislation is fit for purpose and update our policies regularly.

Being an effective regulator

- We acknowledge that our role as a regulator shapes everything we do, including our decisions and our interactions with others.
- We have a regulatory approach that's right for Aotearoa and allows us to adapt and evolve as needed.

3 We work effectively by:

Choosing the most effective interventions

- We're deliberate in choosing when and how we intervene.
- We use the right mix of interventions to get the outcome we want.
- We know when interventions aren't having the right impact and we either stop, slow down, or change our approach.

Making choices based on insights

- We share an understanding of the data we collect, why we collect it, how the data flows, and how it affects our work.
- We have the knowledge and insights we need to identify patterns of risk and harm.
- We use the right information for the right reason.
- We use our knowledge and insights to target resources where we can help make the greatest difference to how work health and safety and energy safety risks are managed.

Listening and telling our story

- We're confident talking about the decisions we make and how we choose to use our finite resources.
- We listen to our stakeholders' views and seek out their feedback.
- We share what we know to support everyone in our health and safety system to play their part in managing risk and preventing harm.

Measuring what we do

- We have evidence of the impact we're making on managing risk effectively and preventing harm.
- We prioritise measuring and evaluating our performance.
- We identify the changes we need to make in how we work so we can keep helping to improve work health and safety and energy safety.

Partnering across Aotearoa

- We know the practical ways our jobs contribute to WorkSafe's public service and Te Tiriti o Waitangi obligations.
- We're committed to improving our understanding of te ao Māori and te reo Māori.
- We act with integrity and in the spirit of service to the community as an agency and as individuals.
- We own our mistakes and put them right.

Being set up for success

- We work as one coordinated WorkSafe.
- We plan, prioritise, and make decisions with deliberate intent, and use integrated processes across groups.
- We're empowered and supported – WorkSafe is a place where people want to work, and feel safe and valued.

We're continually learning and developing the capability we need to achieve our regulatory objectives.

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Appendix: How we implement our regulatory approach

WHO WE ARE

Our role is to be

New Zealand's primary regulator for work health and safety and the safe use and supply of electricity and gas

WHAT WE'RE HERE FOR

To achieve this we'll ensure

Harm prevention is at the heart of what we do

By focusing on

Seeing the 'big picture'

The value we add

Building health and safety capability

Striving for excellence

HOW WE'LL DO IT

We'll deliver this by

Being a behaviour change agent

Working with and through others

Strengthening the integrity of the system

Being an effective regulator

And through

We'll choose the most effective interventions

We'll make choices based on insights

We'll listen and tell our story

We'll measure what we do

We'll partner across Aotearoa

We'll set up for sucess

By having in place the right

Culture and values

Leadership

Skills and capability

Infrastructure

Decision making

Processes and practices

Plans and measures

Strategic focus

WHY WE DO IT

We do all this so that

We have a productive New Zealand in which everyone who goes to work comes home healthy and safe

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Appendix 5: WorkSafe Organisational Structure – Activities, Budget and FTEs

Group	Teams	Core Activities	Legislative Function	Activity Measures	2020/21 Budget $m	FTEs June 21
Operations	**Operations - Management**		-	-	2.080	5
	Operations - General Inspectorate 1. 3 Regions (21 Teams) 2. National Planning and Support	- Assessments, inspection and enforcement activities and actions - Education and engagement activities - Investigations - Respond to concerns about immediate risk of harm, as requested by the Critical Response team - Compliance support, as determined through national projects	WA sec 10(c) WA sec 10(g)	- Regulatory activities - Enforcement activities - Enforcement actions	20.381	168
	Operations - Specialist Interventions 1. Interventions and Support 2. Investigations 3. Critical Response	- Duty Holder Reviews - Complex investigations - Centralised File Support Unit - Regulatory Assurance - Enforceable Undertakings - Major incident response - Victim services and Coronial activities	WA sec 10(c)	- Duty Holder Reviews - Investigations - Enforcement activities	10.697	87
	Operations - High Hazards, Energy & Public Safety 1. Energy Safety 2. Hazardous substances 3. Major Hazard Facilities 4. Extractives 5. Petroleum and Geothermal	- Electrical and Gas audits - Assessment of safety cases - Site inspections - Enforcement activities - Certificate of Competence (COC) assessments and renewals - Applications (authorisations, approvals, and exemptions) under HAZNO regulations - Education and engagement	WA sec 10(c) WA sec 10(e) WA sec 10(f) WA sec 10(ja) Gas Act 1992 Electricity Act 1992 HASNO Act 1996	- Electrical and Gas audits - Safety cases assessed - Site inspections - Enforcement activities - COCs - Applications	13.025	70

Group	Teams	Core Activities	Legislative Function	Activity Measures	2020/21 Budget $m	FTEs June 21
	Operations - Operational Excellence 1. Operational Performance 2. Customer Operational Servicing (COS)	- Receiving and triaging notifications and liaising with relevant teams to respond - Improvement of regulatory performance - Continuous improvement - Integrated planning	WA sec 10(c)		2.758	22
External Strategy and Engagement	1. Engagement and Implementation 2. Systems Strategies 3. Comms and Marketing 4. Innovation 5. BetterWorkNZ 6. Maruiti	- Partnering with industry leaders and supporting industry led initiatives - Developing and implementing system strategies - Internal and external communications and marketing - Building a culture of innovation - Implementing a national improvement framework - Partnering with Maori to improve the Health and Safety equity gap for Māori	WA sec 10(ca) WA sec 10(f) WA sec 10(g) WA sec 10(i) WA sec 10(j) WA sec 10(k)		12.273	57
Regulatory Effectiveness and Legal (REAL)	1. Regulatory Intelligence 2. Regulatory Frameworks 3. Research and Evaluation 4. Operational Policy 5. Regulatory Practice 6. Guidance 7. Education 8. Legal Group	- Data, evidence, research, evaluation, and insights - Advice, support and development of WorkSafe's regulatory framework - Operational policy - Regulatory practice - Guidance and education - Legal advice and support - Privacy Officer	WA sec10(a) WA sec10(b) WA sec10(e) WA sec10(ea) WA sec 10(f) WA sec 10(g) WA sec 10(h)		12.740	Regulatory Effectiveness: 61 Legal: 19
Health and Technical Services	1. Work Related Health Unit (19 FTEs): 2. Health and Safety by Design (3) 3. Business Alignment and Delivery (6)	- Technical information and advice - Authorisations - HTS-led technical projects or programmes	WA sec10(e) WA sec 10(f) WA sec 10(i) WA sec 10(k)		8.059	55

Group	Teams	Core Activities	Legislative Function	Activity Measures	2020/21 Budget $m	FTEs June 21
	4. Technical Programme and Support Unit (34)	- Leading increased delivery of work-related health activity across the organisation (since July 2020).				
Office of the Chief Executive					1.990	3
Digital and Information	1. Digital Experience 2. Assurance and Performance 3. Business Platforms 4. Digital Workplace 5. Digital Delivery Service	- Delivering a cohesive user experience - Providing and developing the data information system - Providing and developing an integrated service platform - Providing and developing a digital workplace - Digital transformation	Support org		20.367	15
Business Performance and Finance	1. Performance systems (includes Ministerial Services) 2. EPMO 3. Risk and Assurance 4. Finance	- Develop and drive organisational strategy - Provide planning, programme, financial, risk management and portfolio investment services, advice and reporting - Enterprise portfolio management services and support	WA sec 10(d) Supports org		6.590	23
People, Culture, Safety and Property	1. Internal Health and Safety 2. Property and Facilities 3. Enterprise Change Management 4. HR Advice and Services 5. Organisational Development 6. Learning and Development 7. Employment Relations Strategy / Framework	- Internal Health, Safety and Well-being - Property and Facilities - Enterprise Change Management - Organisational Development - Learning and Development - Human Resources Advice and Services: (recruitment, payroll / remuneration, employment relations, Human Resources Information System Administration)	Supports org		13.690	25

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Group	Teams	Core Activities	Legislative Function	Activity Measures	2020/21 Budget $m	FTEs June 21
ACC Funded Programmes					9.705	?
Whakaari					5.363	?
Forecast Underspend	Included in internal budget				-3.000	
Total					136.718	610

Appendix 6: Regulations

Regulations which WorkSafe applies as Regulator as at 30 June 2021 include:

1. Amusement Devices Regulations 1978

2. Electricity (China Free Trade Agreement) Regulations 2008

3. Electricity (Hazards from Trees) Regulations 2003

4. Electricity (Safety) Regulations 2010

5. Gas (Safety and Measurement) Regulations 2010

6. Geothermal Energy Regulations 1961

7. Hazardous Substances (Class 1 to 5 Controls) Regulations 2001

8. Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001

9. Hazardous Substances (Compressed Gases) Regulations 2004

10. Hazardous Substances (Emergency Management) Regulations 2001

11. Hazardous Substances (Exempt Laboratories) Regulations 2001

12. Hazardous Substances (Fireworks, Safety Ammunition and Other Explosives Transfer) Regulations 2003

13. Hazardous Substances (Identification) Regulations 2001

14. Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2001

15. Hazardous Substances (Tracking) Regulations 2001

16. Health and Safety at Work (Adventure Activities) Regulations 2016

17. Health and Safety at Work (Asbestos) Regulations 2016

18. Health and Safety at Work (General Risk and Workplace Management) Regulations 2016

19. Health and Safety at Work (Hazardous Substances) Regulations 2017

20. Health and Safety at Work (Infringement Offences and Fees) Regulations 2016

21. Health and Safety at Work (Major Hazard Facilities) Regulations 2016

22. Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016

23. Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016

24. Health and Safety at Work (Rates of Funding Levy) Regulations 2016

25. Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

26. Health and Safety in Employment (Pipelines) Regulations 1999

27. Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulation 1999

28. Health and Safety in Employment Regulations 1995

29. Lead Process Regulations 1950

30. Spray Coating Regulations 1962.

Appendix 7: Authorisations

Authorisation activity covers the following regimes:

- amusement devices

- adventure activities

- occupational diving

- hazardous substances (extensively)

- pressure equipment, cranes, and passenger ropeways (extensively)

- forklifts

- major hazard facilities (extensively)

- petroleum extraction

- geothermal

- petroleum and gas pipelines

- mining and quarrying (extensively)

- asbestos (extensively)

- scaffolding

- powder actuated tools

- railways (with the Ministry of Transport).

Appendix 8: Safe Work Instruments

List of Safe Work Instruments for which WorkSafe has responsibility as at 30 June 2021:

1. Health and Safety at Work (Asbestos - Prescribed Relevant Courses) Safe Work Instrument

2. Health and Safety at Work (Hazardous Substances - Above Ground Stationary Tanks Connected to a Generator Set) Amendment Safe Work Instrument 2019

3. Health and Safety at Work (Hazardous Substances - Above Ground Stationary Tanks Connected to a Generator Set) Safe Work Instrument 2017

4. Health and Safety at Work (Hazardous Substances - Above Ground Rotationally Moulded Polyethylene Stationary Tanks) Safe Work Instrument 2017

5. Health and Safety at Work (Hazardous Substances - Additional and Modified Requirements for Specified Class 6 and 8 Substances) Safe Work Instrument 2017

6. Health and Safety at Work (Hazardous Substances - Additional Substances that Do Not Require Tracking) Amendment Safe Work Instrument 2019

7. Health and Safety at Work (Hazardous Substances - Additional Substances that Do Not Require Tracking) Safe Work Instrument 2018

8. Health and Safety at Work (Hazardous Substances - Charging LPG Cylinders of Less than 110 kg Water Capacity) Safe Work Instrument 2017

9. Health and Safety at Work (Hazardous Substances - Design and Construction of Above Ground Stationary Tank to ULC-ORD-C80.1-2000) Safe Work Instrument 2017

10. Health and Safety at Work (Hazardous Substances - Disused Below Ground Tanks on Farms) Safe Work Instrument 2017

11. Health and Safety at Work (Hazardous Substances - Filling of Below Ground Stationary Tanks by Pumping) Safe Work Instrument 2017

12. Health and Safety at Work (Hazardous Substances - Management of pre-2006 stationary container systems up to 60,000 L) Safe Work Instrument 2017

13. Health and Safety at Work (Hazardous Substances - Markings for Pipework Connected to Above Ground Stationary Tanks) Safe Work Instrument 2017

14. Health and Safety at Work (Hazardous Substances - Polyethylene Above Ground Stationary tanks for Diesel Fuel) Safe Work Instrument 2017

15. Health and Safety at Work (Hazardous Substances - Reduced Secondary Containment for Certain Above Ground Stationary Tanks) Safe Work Instrument 2017

16. Health and Safety at Work (Hazardous Substances - Requirements for Specified Fumigants) Safe Work Instrument 2017

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17. Health and Safety at Work (Hazardous Substances - Specification of Design Standards for Low-Pressure Fire Extinguishers) Amendment Safe Work Instrument 2019

18. Health and Safety at Work (Hazardous Substances - Specification of Design Standards for Low-Pressure Fire extinguishers) Safe Work Instrument 2019

19. Health and Safety at Work (Hazardous Substances - Specification of Design Standards for Refillable Cylinders) Amendment Safe Work Instrument 2019

20. Health and Safety at Work (Hazardous Substances - Specification of Standard Relating to Non-refillable Gas Containers) Safe Work Instrument 2017

21. Health and Safety at Work (Hazardous Substances - Thermoplastic Stationary Tanks) Safe Work Instrument 2017

22. Health and Safety at Work (Hazardous Substances - Validity Periods of Compliance Certificates for Stationary Container Systems) Safe Work Instrument 2018

23. Health and Safety at Work (Hazardous Substances - Specification of Design Standards for Refillable Cylinders) Amendment Safe Work Instrument 2019

24. Health and Safety at Work (Hazardous Substances - Specification of Design Standards for Refillable Cylinders) Safe Work Instrument 2018.

Appendix 9: Regulatory Interventions

A primary function of WorkSafe is to monitor and enforce compliance with the health and safety system (WorkSafe New Zealand Act 2013 sec 10(c)). WorkSafe undertakes seventeen regulatory interventions as set out below (refer Appendix 9 for activity volumes):

Regulatory Activities

- *Assessments* - a safety assessment is a documented, comprehensive, and systematic investigation and analysis of all health and safety risks associated with major incident hazards. It demonstrates how those risks will be reduced so far as is reasonably practicable and identifies any deficiencies.

- *Audits* – may be undertaken of anyone who designs, installs and/or operates electrical or gas installations and networks, or supplies or installs electrical or gas appliances and fittings in New Zealand. These audits can be planned, or can be as the result of an accident, incident, or information received from another regulatory agency. An audit may identify problems requiring remedy and enforcement action may be taken including issuing an infringement notice or prosecution.

- *Investigations* - An investigation is a purposeful, structured process of inquiry that helps to establish facts or find something out, and decide what action to take (if any). A decision to investigate is made on the basis of information received (e.g. notifications, complaints, intelligence or an inspection). An investigation may result in enforcement action.

Enforcement Activities

- *Verbal direction* – directive letters and verbal direction are used when an inspector identifies a breach of one of WorkSafe's Acts or regulations and makes a decision that the non-compliance does not require a statutory notice. Inspectors are able to provide the duty holder with directive advice, either in writing or verbally. A directive letter may also be issued as part of an inspection report recommendation.

- *Energy Safety warnings* – a warning notice may be issued under the Electricity Act 1992 (sec. 8) where there are risks arising directly or indirectly from any fittings or electrical appliance or electrical installation. The notice outlines the offence observed and the remedial action to take.

- *Directive letter* – refer verbal direction above.

- *Non-disturbance notice* – may be issued if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of their compliance powers. A non-disturbance notice might also be issued in order to preserve the site at which a notifiable event has occurred, or to stop any disturbance of a particular site for a specified time.

- *Improvement notice* – may be issued by an inspector in order to rectify a breach or to prevent non-compliance, within a set timeframe. The notice may also contain advice such as measures that may be taken to rectify the breach.

- *Prohibition notice* - may be issued by an inspector to stop an activity that is occurring or may occur at a workplace. The notice may be issued in cases where the risk gap is extreme or substantial, the risk is imminent or there may be a serious risk to the health and safety of a person due to failure to comply with the Health and Safety at Work Act 2015 or regulations.

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- *Sustained compliance letter* – may be issued by an inspector in a situation where they would have issued a Prohibition Notice, but the duty holder rectifies the issue while the inspector is still on site.

- *HSNO compliance order* – provided for under the Hazardous Substances and New Organisms Act 1996 (HSNO). The compliance may require the person to: cease an activity that contravenes the provisions of HSNO, or relates to a hazardous substance or new organism that poses a danger to health and safety of people or the environment; or do something as required by the enforcement officer to ensure the person complies with the Act.

- *Enforceable undertakings* – an agreement between WorkSafe and a duty holder following a breach (including an alleged breach) of Health and Safety at Work Act 2015 and, once in place, it is legally binding. It is generally used as an alternative to prosecution.

- *Duty holder review* – a structured self-review undertaken by a duty holder at the request of WorkSafe to ensure the duty holder understands the cause of an event. A Duty Holder Review identifies root or underlying causes, improvements and action plans to address them and prevent recurrence. WorkSafe uses the information gained from these reviews to contribute to its knowledge about the health and safety performance of industrial and business sectors as well as of individual PCBUs

- *Internal review* – WorkSafe may be required to undertake an internal review of its enforcement decisions under subpart 5 of Health and Safety at Work Act 2015.

Enforcement Actions

- *Infringement notice* – may be issued if an investigation or audit indicates that there is serious non-compliance, or there is a previous history of non-compliance. The notice requires remedial action within a specified timeframe and is accompanied by an infringement fee.

- *Energy Safety infringement* – written notices requiring remedial action may be issued to any person having control of any works, electrical installation, or electrical appliance under the Electricity Act 1992 (sec. 8).

- *Prosecutions disposed* – WorkSafe may prosecute rather than issue an infringement notice. This will usually happen when this is considered necessary for deterrent effect or when an infringement notice has not achieved correction of a non-compliance situation.

Appendix 10: Regulatory Intervention Activity Volumes

Source: 2019/20 Annual Report pages 47 - 51, Draft 2020/21 Annual Report pages 27 - 30

	2016/17 Actual	2017/18 Actual	2018/19 Actual	2019/20 Actual	2020/21 Draft	Change 2016/17 to 2018/19*	
Regulatory Activities							
Assessments	13,425	14,285	14,010	13,043	14,121	585	4%
Audits	12	5	5	12	12	-7	-58%
Investigations	356	240	212	135	187	-144	-40%
Total	**13,793**	**14,530**	**14,227**	**13,190**	**14,320**	**434**	**3%**
Enforcement Activities							
Verbal direction	1	360	1,270	1,394	1,923	1,269	126900%
Energy Safety warnings	154	75	48	53	99	-106	-69%
Directive letter	42	524	2,053	1,651	1,688	2,011	4788%
Non-disturbance notice	3	60	213	174	94	210	7000%
Improvement notice	2,152	3,619	5,385	3,974	4,517	3,233	150%
Prohibition notice	1,178	1,196	1,618	1,302	1,152	440	37%
Sustained compliance letter	0	399	1,262	977	1,045	1,262	n/a
HSNO compliance order	151	122	1	0	7	-150	-99%
Enforceable undertakings	2	14	8	7	2	6	300%
Duty holder review	404	395	302	244	226	-102	-25%
Internal review	13	27	20	23	24	7	54%
Total	**4,100**	**6,791**	**12,180**	**9,799**	**10,777**	**8,080**	**197%**
Enforcement Actions							
Infringement notice	12	10	6	6	8	-6	-50%
Energy Safety infringement	14	14	10	7	20	-4	-29%
Prosecutions disposed	67	68	83	77	61	16	24%
Total	**93**	**92**	**99**	**90**	**89**	**6**	**6%**

* The comparison is against 2018/19 because activity in 2019/20 and 2020/21 were impacted by Covid-19.

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Appendix 11: Performance Measures

	2013/14 Actual	2014/15 Actual	2015/16 Actual	2016/17 Actual	2017/18 Actual	2018/19 Actual	2019/20 Actual	2019/20 Target	Target Achieved	Notes
System Targets *(Outcome measures)*										
Fatal work-related injuries (per 100,000 FTEs)										
Date of data	2010-12	2011-13	2012-14	2013-15	2014-16	2015-17	2016-18	2020		
Rate	4.2	3.6	2.4	2.2	2.1	2.1	2.1	2.5		Actuals are averaged over 3 years
1 Difference from baseline	27%	9%	-27%	-33%	-36%	-36%	-35%	-25%	✓	Baseline = 3.3 (2008-10)
Serious non-fatal work-related injuries (per 100,000 FTEs)										
Date of data	2012	2013	2014	2015	2016	2017	2018	2020		
Rate	20.1	19.1	17.7	15.6	14.3	16.9	17.3	14.3		Actuals are 18 months in arrears
2 Difference from baseline	6%	1%	-7%	-18%	-25%	-11%	-9%	-25%	✗	Baseline = 19.0 (2008-10)
Work-related injuries resulting in more than a week away from work (per 1,000 FTEs)										
Date of data	2012	2013	2014	2015	2016	2017	2018	2020		
Rate	10.7	11.1	11.9	12.3	12.3	12.6	12.7	8.4		Actuals are 18 months in arrears
3 Difference from baseline	-5%	-2%	5%	9%	8%	12%	12%	-25%	✗	Baseline = 11.3 (2009-11)
Zero catastrophic events										
Date of data	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2019/20		
4 Number of events	0	0	0	0	0	0	1	0	✗	
Fatalities from electrical and gas accidents trend down										
Date of data	2009-13	2010-14	2011-15	2012-16	2013-17	2014-18	2015-19	2021/22		
Electricity (5-year per million exposed)										
5 Rate	0.32	0.27	0.27	0.18	0.13	0.04	0.04	<0.8	✓	Actuals are averaged over 5 years
LPG (5-year per million exposed)										
6 Rate	0.55	0.30	0.30	0.29	0.23	0.23	0.23	<0.9	✓	Actuals are averaged over 5 years
Natural Gas (5-year per million exposed)										
7 Rate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	<0.7	✓	Actuals are averaged over 5 years
50% reduction in asbestos-related disease by 2040										
Date of data	2010	2011	2012	2013	2014	2015	2016	2040		Actuals are 42 months in arrears
8 Number of mesothelioma fatalities	94	71	75	90	84	107	82	<or= 44	?	Target is for 2040 - it is not possible to say whether it will be achieved from this data
Statement of Intent measures and results *(Impacts)*										
People Value Health and Safety										
9 Percentage of workers in priority sectors who view health and safety as a top priority			N/A	39%	36%	49%	N/M	>65%	-	Biennial measure - not measured in 2019/20
10 Percentage of employers in priority sectors who view health and safety as a top priority			N/A	63%	63%	59%	N/M	>75%	-	Biennial measure - not measured in 2019/20
11 Percentage of people (workers and employers) who made at least one change to improve workplace safety and/or reduce risks to workers' health			N/A	87%	84%	86%	83%	>85%	✗	

	2013/14 Actual	2014/15 Actual	2015/16 Actual	2016/17 Actual	2017/18 Actual	2018/19 Actual	2019/20 Actual	2019/20 Target	Target Achieved	Notes
Health and Safety improves wellbeing										
12 Percentage of employers who have a process for identifying, assessing and managing the business's main health and safety risks, who also regularly review the processes and systems			N/A	79%	81%	>84%	N/M	>80%	-	Not measured in 2019/20
13 Workers who agreed their workplace has ways for workers to participate in health and safety and raise issues			N/A	90%	83%	87%	N/M	>90%	-	Biennial measure - not measured in 2019/20
14 Employers who agreed their workplace has ways for workers to participate in health and safety and raise issues			N/A	86%	86%	86%	N/M	>90%	-	Biennial measure - not measured in 2019/20
15 Percentage of all precursor events that were adequately responded to			99%	96%	77%	61%	66%	>99%	✗	"Definition of a 'precursor event' was changed and results are therefore not comparable to the target".
16 Cases of non-compliance relating to a breach of the requirements set out in safety cases or Principal Hazard Management Plans subsequent to submission			N/A	4	12	N/A	N/A	0	-	This measure is "no longer fit for purpose" and has been replaced by a new safety cases performance measure.
Collective approach to Health and Safety										
17 % of people (workers and employers) we engage with who agreed that: WorkSafe is making a real difference to workplace health and safety in New Zealand			N/A	66%	66%	70%	72%	>75%	✗	
Statement of Performance Expectations measures and results *(Effectiveness)*										
Harm Prevention										
18 % of people who say our guidance is useful or very useful			95%	94%	97%	97%	98%	97%	✓	
19 % of assessments that include interaction with a worker or representative where available			N/A	N/A	N/A	89%	79.3%	>or= 80%	✗	
20 Update and implement Healthy Work Plan and Harm Reduction Action Plan			N/A	N/A	N/A	N/A	Achieved	Achieve	✓	
21 % of assessments that include a focus on work-related health risks			29%	36%	50%	61%	69%	>or= 50%	✓	
Regulatory Effectiveness										
22 % of prosecutions that are successful			91%	88%	96%	93%	88%	>or= 80%	✓	
23 % of investigations where a final decision is made and communicated to victims and Persons Conducting a Business or Undertaking (PCBU) within 12 months of commencement			N/A	N/A	N/A	100%	89%	100%	✗	
24 % of energy safety investigations (notifiable/non-notifiable incidents and unsafe situations) involving gas and electricity that are completed within 60 days			N/A	91%	93%	93%	87%	>or= 80%	✓	
25 % of safety cases under review according to schedule			N/A	N/A	N/A	N/A	100%	100%	✓	

	2013/14 Actual	2014/15 Actual	2015/16 Actual	2016/17 Actual	2017/18 Actual	2018/19 Actual	2019/20 Actual	2019/20 Target	Target Achieved	Notes
25 % of safety cases under review according to schedule			N/A	N/A	N/A	N/A	100%	100%	✓	
System Leadership										
26 Number and range of sectors supported by tripartite sector leadership groups			N/A	N/A	N/A	N/A	5	6	✓	
Percentage of people we directly engage with who agreed WorkSafe is:										
27 - Educative			N/A	64%	69%	70%	66%	>70%	✗	
28 - Fair			81%	88%	91%	91%	91%	>91%	✗	
29 - Proportionate			N/A	67%	72%	68%	71%	>68%	✓	
30 - Performing Effectively			N/A	66%	66%	70%	72%	>70%	✓	
Organisational Excellence *(page 71)*										
31 Staff engagement as measured in the 'We Say' survey results							N/M	>or= 61%	-	Not measured in 2019/20
32 Progress toward achieving strategic goal of becoming a leader in New Zealand health and safety practice							"Performing"	"Performing"	✓	

Performance Summary	2019/20
Number of measures achieved	14
Number of measures not achieved	10
Number of measures not measured or achievement cannot be assessed	8
Total Measures	**32**

SAGEBUSH STRATEGIC (FINANCE) PARTNERS

Appendix 12: Cost and Revenue Changes Since Establishment

$000s	2013/14 6.5 mths	2014/15 Actual	2015/16 Actual	2016/17 Actual	2017/18 Actual	2018/19 Actual	2019/20 Actual	2020/21 Forecast	Change 2014/15 to 2020/21	
Revenue										
Baseline	44,112	87,930	86,863	86,492	86,992	86,992	86,992	86,992	-938	-1.1%
Budget 2017 - cost pressures				2,240	6,845	7,165	7,610	8,110	8,110	
Budget 2019 - inspectorate, legal & modernisation							11,681	17,306	17,306	
Budget 2020 - COVID							1,257	2,197	2,197	
- Whakaari								5,654	5,654	
- Refridgeration							351	415	415	
Budget 2021 - Whakaari									0	
Other								774	774	
Total Crown Revenue	**44,112**	**87,930**	**86,863**	**88,732**	**93,837**	**94,157**	**107,891**	**121,448**	**33,518**	**38.1%**
Interest Revenue	272	933	802	592	821	1,263	1,065	397	-536	-57.4%
Other Revenue										
- ACC funding	215	678	2,139	2,079	1,838	6,302	12,992	19,154	18,476	2725.1%
- Safety Case reviews for MHF	180	1,327	74	175	437	1,034	2,327	?		
- other	34	382	1,222	1,154	1,239	1,155	878	1,402	1,020	267.0%
Total Revenue	**44,813**	**91,250**	**91,100**	**92,732**	**98,172**	**103,911**	**125,153**	**142,401**	**52,478**	**56.1%**
Expenditure										
Personnel costs	24,485	52,208	58,089	60,162	62,765	66,619	80,644	88,420	36,212	69.4%
Other expenses	16,380	31,874	34,292	30,450	30,440	34,568	38,804	43,731	11,857	37.2%
Depreciation and Ammortisation	557	1,099	936	1,032	1,760	3,071	3,393	4,566	3,467	315.5%
Asset impairment				6,092	1,162				0	
Total Expenditure	**41,422**	**85,181**	**93,317**	**97,736**	**96,127**	**104,258**	**122,841**	**136,717**	**51,536**	**60.5%**
Surplus/(Deficit)	**3,391**	**6,069**	**-2,217**	**-5,004**	**2,045**	**-347**	**2,312**	**5,684**	**-385**	**-6.3%**

SAGEBUSH STRATEGIC (FINANCE) PARTNERS

Appendix 13: WorkSafe's Financial Forecasts

Source: Annual Reports 2013/14 to 2019/20; WorkSafe forecasts provided 10/06/2021

$000s	2013/14 6.5 mths	2014/15 Actual	2015/16 Actual	2016/17 Actual	2017/18 Actual	2018/19 Actual	2019/20 Actual	2020/21 Forecast	2021/22 Forecast	2022/23 Forecast	2023/24 Forecast	2024/25 Forecast	2025/26 Forecast	2026/27 Forecast	2027/28 Forecast	2028/29 Forecast	2029/30 Forecast	2030/31 Forecast
Revenue																		
Baseline	44,112	87,930	86,863	86,492	86,992	86,992	86,992	86,992	86,992	86,992	86,992	86,992	86,992	86,992	86,992	86,992	86,992	86,992
Budget 2017 - cost pressures				2,240	6,845	7,165	7,610	8,110	8,110	8,110	8,110	8,110	8,110	8,110	8,110	8,110	8,110	8,110
Budget 2019 - inspectorate, legal & modernisation							11,681	17,306	26,206	27,111	27,111	27,111	27,111	27,111	27,111	27,111	27,111	27,111
Budget 2020 - COVID							1,257	2,197	1,800									
- Refridgeration							351	415	255	70	70	70	70	70	70	70	70	70
- Whakaari								5,654	5,954	1,305								
Budget 2021 - Whakaari										4,282	1,305							
Forecasting adjustments & roundings								774	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1
Total Crown Revenue	44,112	87,930	86,863	88,732	93,837	94,157	107,891	121,448	129,316	127,869	123,587	122,282	122,282	122,282	122,282	122,282	122,282	122,282
Interest Revenue	272	933	802	592	821	1,263	1,065	397	250	100	100	100	100	100	100	100	100	100
Other Revenue																		
- ACC funding	215	678	2,139	2,079	1,838	6,302	12,992	19,154	17,348	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
- Safety Case Reviews	180	1,327	74	175	437	1,034	2,327	?	?	?	?	?	?	?	?	?	?	?
- other	34	382	1,222	1,154	1,239	1,155	878	1,402	2,020	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Total Revenue	44,813	91,250	91,100	92,732	98,172	103,911	125,153	142,401	148,934	143,969	139,687	138,382	138,382	138,382	138,382	138,382	138,382	138,382
Expenditure																		
Personnel costs	24,485	52,208	58,089	60,162	62,765	66,619	80,644	88,420	89,114	87,530	89,130	90,730	90,730	90,730	90,730	90,730	90,730	90,730
Other expenses	16,380	31,874	34,292	30,450	30,440	34,568	38,804	43,731	54,078	47,117	42,447	41,142	41,142	41,142	41,142	41,142	41,142	41,142
Depreciation and Ammortisation	557	1,099	936	1,032	1,760	3,071	3,393	4,566	7,558	9,257	10,407	9,449	7,180	7,265	7,629	8,201	8,091	7,789
Asset impairment				6,092	1,162													
Total Expenditure	41,422	85,181	93,317	97,736	96,127	104,258	122,841	136,717	150,750	143,904	141,984	141,321	139,052	139,137	139,501	140,073	139,963	139,661
Surplus/(Deficit)	3,391	6,069	-2,217	-5,004	2,045	-347	2,312	5,684	-1,816	65	-2,297	-2,939	-670	-755	-1,119	-1,691	-1,581	-1,279

$000s	2013/14 6.5 mths	2014/15 Actual	2015/16 Actual	2016/17 Actual	2017/18 Actual	2018/19 Actual	2019/20 Actual	2020/21 Forecast	2021/22 Forecast	2022/23 Forecast	2023/24 Forecast	2024/25 Forecast	2025/26 Forecast	2026/27 Forecast	2027/28 Forecast	2028/29 Forecast	2029/30 Forecast	2030/31 Forecast
Assets																		
Cash	16,711	21,856	21,475	18,654	34,206	35,658	42,230	32,391	30,589	37,680	37,238	35,811	31,322	26,832	22,343	16,290	16,801	17,311
Receivables	741	685	2,415	2,031	1,148	1,702	1,796	1,928	1,928	1,928	1,928	1,928	1,928	1,928	1,928	1,928	1,928	1,928
Fixed Assets	3,166	6,707	10,241	7,801	11,331	11,906	17,343	23,007	29,793	33,287	31,083	27,570	26,391	25,126	23,496	21,295	19,204	17,416
Total Assets	**20,618**	**29,248**	**34,132**	**28,486**	**46,685**	**49,266**	**61,370**	**57,326**	**62,310**	**72,895**	**70,249**	**65,310**	**59,641**	**53,886**	**47,767**	**39,514**	**37,933**	**36,655**
Liabilities																		
Revenue in Advance			-788	-354	-7,252	-11,241	-11,337	-7,166	-1,068	-1,068	-1,068	-1,068	-1,068	-1,068	-1,068	-1,068	-1,068	-1,068
Liabilities	-9,670	-11,700	-10,834	-10,626	-10,329	-9,269	-18,765	-12,709	-12,213	-12,213	-12,213	-12,213	-12,213	-12,213	-12,213	-12,213	-12,213	-12,213
Loans								0	-13,393	-23,913	-23,563	-21,563	-16,563	-11,563	-6,563	0	0	0
Total Liabilities	**-9,670**	**-11,700**	**-11,621**	**-10,979**	**-17,581**	**-20,510**	**-30,102**	**-19,875**	**-26,675**	**-37,195**	**-36,845**	**-34,845**	**-29,845**	**-24,845**	**-19,845**	**-13,282**	**-13,282**	**-13,282**
Net Assets	**10,948**	**17,548**	**22,511**	**17,507**	**29,104**	**28,756**	**31,268**	**37,451**	**35,636**	**35,700**	**33,404**	**30,465**	**29,796**	**29,042**	**27,923**	**26,232**	**24,652**	**23,374**
Equity																		
Capital reserves	8,671	10,583	16,380	16,380	25,934	25,934	26,134	26,634	26,634	26,634	26,634	26,634	26,634	26,634	26,634	26,634	26,634	26,634
Memorandum accounts				473	610	1,850	4,545	4,545	4,545	4,545	4,545	4,545	4,545	4,545	4,545	4,545	4,545	4,545
Accumulated surplus/(deficit)	2,277	6,965	4,750	1,127	2,697	2,212	3,285	6,273	4,458	4,522	2,226	-713	-1,382	-2,136	-3,255	-4,946	-6,526	-7,804
Transfer to Memo account (& other adjs)			1,381	-473	-137	-1,240	-2,695											
Total Equity	**10,948**	**17,548**	**22,511**	**17,507**	**29,104**	**28,756**	**31,269**	**37,452**	**35,637**	**35,701**	**33,405**	**30,466**	**29,797**	**29,043**	**27,924**	**26,233**	**24,653**	**23,375**

$000s	2013/14 6.5 mths	2014/15 Actual	2015/16 Actual	2016/17 Actual	2017/18 Actual	2018/19 Actual	2019/20 Actual	2020/21 Forecast	2021/22 Forecast	2022/23 Forecast	2023/24 Forecast	2024/25 Forecast	2025/26 Forecast	2026/27 Forecast	2027/28 Forecast	2028/29 Forecast	2029/30 Forecast	2030/31 Forecast
Cash Movements																		
Fixed Assets Purchased								-15,344	-13,251	-8,703	-6,437	-6,500	-6,500	-6,500	-6,500	-6,500	-6,500	-6,500
Fixed Asset Disposals								1,000	500	500	500	500	500	500	500	500	500	500
Loan Draw Down								13,393	10,520	4,650	3,000	0	0	0	0	0	0	0
Loan Repayment								0	0	-5,000	-5,000	-5,000	-5,000	-5,000	-6,563	0	0	
Depreciation Funding								10,550	10,850	10,850	10,850	10,850	10,850	10,850	10,850	10,850	10,850	10,850
Depreciation Reallocated to Operating								-2,992	-1,593	-443	-1,401	-3,670	-3,585	-3,221	-2,649	-2,759	-3,061	
Surplus/(Deficit) excl depn								-1,815	65	-2,296	-2,939	-669	-755	-1,119	-1,690	-1,581	-1,278	
ACC movement								-6,098	0	0	0	0	0	0	0	0	0	
Working Capital movement								-495	0	0	0	0	0	0	0	0	0	
Net increase/(decrease) in Cash		**5,145**	**-381**	**-2,821**	**15,552**	**1,453**	**6,572**	**-9,839**	**-1,802**	**7,091**	**-442**	**-1,426**	**-4,489**	**-4,489**	**-4,489**	**-6,052**	**511**	**511**
Opening Cash balance		16,711	21,856	21,475	18,654	34,206	35,658	42,230	32,391	30,589	37,680	37,238	35,811	31,322	26,832	22,343	16,290	16,801
Closing Cash balance		21,856	21,475	18,654	34,206	35,658	42,230	32,391	30,589	37,680	37,238	35,811	31,322	26,832	22,343	16,290	16,801	17,311

Appendix 14: Estimated Cost Pressures

Source: WorkSafe forecasts provided 10/06/2021 and 2022 Budget Bid initial templates

$000s	2021/22 Forecast	2022/23 Forecast	2023/24 Forecast	2024/25 Forecast	2025/26 Forecast	2026/27 Forecast	2027/28 Forecast	2028/29 Forecast	2029/30 Forecast	2030/31 Forecast	Total 10 Years
Expenditure											
Personnel costs	89,114	87,530	89,130	90,730	90,730	90,730	90,730	90,730	90,730	90,730	
Other expenses	54,078	47,117	42,447	41,142	41,142	41,142	41,142	41,142	41,142	41,142	
Depreciation and Ammortisation	7,558	9,257	10,407	9,449	7,180	7,265	7,629	8,201	8,091	7,789	
Asset impairment											
Total Expenditure[1]	**150,750**	**143,904**	**141,984**	**141,321**	**139,052**	**139,137**	**139,501**	**140,073**	**139,963**	**139,661**	
Forecast Cost Pressures											
1 Market Activity											
General Inspectorate & HH/E/PS costs	33,406	33,406	33,406	33,406	33,406	33,790	34,179	34,572	34,969	35,372	
Growth in Labour Force[2]	0.00%	0.00%	0.00%	0.00%	1.15%	1.15%	1.15%	1.15%	1.15%	1.15%	
= Cost pressure due to market activity	0	0	0	0	384	389	393	398	402	407	2,372
2 Wage & Price Inflation											
Wage inflation rate[2]	3.02%	3.02%	3.02%	3.02%	3.02%	3.02%	3.02%	3.02%	3.02%	3.02%	
Wage Inflation					2,740	2,823	2,908	2,996	3,086	3,180	
CPI rate[2]	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	
CPI	1082	964	890	882	899	917	936	954	973	993	
= Wage & Price Inflation	1,082	964	890	882	3,639	3,740	3,844	3,950	4,060	4,172	27,222
3 Regulatory Reform Programme											
Plant and Structures (possible 2022 Budget Bid)		9,152	5,471	3,578	3,153						21,354
Hazardous Substances					9,167	9,167	9,167				27,500
Hazardous Work								6,667	6,667	6,667	20,000
4 Other Regulatory Changes											
Covid-19 (possible 2022 Budget Bid)		7,248	6,990	7,043	7,043	7,043	7,043	7,043	7,043	7,043	63,539
Confidentiality		4,240	4,240	4,240	4,240	4,240	4,240	4,240	4,240	4,240	38,160
Ngā Paiaka and Adventure Activities											unknown
5 Modernisation Programme											
eTOM and other service design work											unknown
Total Forecast Cost Pressures	**1,082**	**21,604**	**17,591**	**15,743**	**27,626**	**24,578**	**24,686**	**22,297**	**22,411**	**22,529**	**200,147**

[1] *Forecasts provided by WorkSafe 10/06/2021. WorkSafe forecasts include wage inflation for first four years.*

[2] *Source of Growth in Labour Force, Wage Inflation and CPI forecasts: Fiscal Strategy Model – BEFU 2021, The Treasury 20 May 2021, https://www.treasury.govt.nz/publications/fsm/fiscal-strategy-model-befu-2021*

SAGEBUSH STRATEGIC (FINANCE) PARTNERS

Appendix 15: Regulatory Changes and Other Cost Pressures

Regulatory Reform Programme

Background

WorkSafe is in the middle of a longer-term programme of regulatory change. The 2013 Report of the Independent Taskforce on Workplace Health and Safety identified the regulatory framework as a significant issue: *'…The framework is confusing with multiple pieces of legislation, blending hazard- and risk-management specifications, falling across overlapping and ambiguous jurisdictional boundaries...'* [100]. In response to the report, the Government passed the Health and Safety at Work Act in 2015, based on the Australian Model Law. A limited suite of new regulations was put in place to ensure the legislation could operate from day one. At that time, MBIE agreed a longer-term plan for regulatory reform, broadly based on Australian Model regulations, that would address the issues identified in the Independent Taskforce report.

The regulatory reform programme is led by MBIE on behalf of the Minister and includes three key areas of change over the next 10 years:

- Plant and Structures
- Hazardous Substances
- Hazardous Work.

Other less significant regulatory changes include mining, licensing of refrigeration technicians and minor amendments to the Hazardous Substances regulations.

It should be noted that the possible 2022 Budget Bids identified below are yet to be considered by MBIE or Treasury. Details of costs represent the views of WorkSafe only.

Plant and Structures (possible 2022 Budget Bid)

The Government has agreed to the main policy proposals for new plant and structures regulations. These regulations will require some changes for all businesses that use plant and equipment, and registration requirements for specified high-risk plant. The changes will impact a significant number of New Zealand businesses. Draft regulations are planned to be consulted on in early 2022, with aspects of the regulations potentially being in place by the end of 2022.

WorkSafe will need to undertake a range of activity to effectively implement the new regulations. WorkSafe has noted that regulatory change creates a significant opportunity to engage with New Zealand about health and safety more broadly. To achieve the most impact from regulatory change, WorkSafe therefore intends to broadly engage, educate and inform as part of its implementation.

WorkSafe has undertaken initial scoping work on what will be required to implement the regulations and is currently preparing a business case for the programme of work and the additional costs associated with it. The work will include guidance, education, and engagement, enhancing our technical expertise, building a registration function and associated

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[100] Report of the Independent Taskforce on Workplace Health and Safety, April 2013, page 11.

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Information Technology build. Early indicative costing of the whole of life cost of implementation is approximately $20m.

Hazardous Substances

The 2015 changes to health and safety at work legislation and regulations included a 'lift and shift' of hazardous substances regulation from the Hazardous Substances and New Organisms (HSNO) regime to the Health and Safety at Work regime. At the time the Government recognised that the lift and shift of the regulations was only a first step to fully modernise and improve the regulation of hazardous substances at work, and that a second phase of work was needed to address the substance of the regulations.

We have been advised that although HSNO is now a more coherent part of the health and safety at work system, there are still significant issues with the substance of the regulations. Many of the requirements are dated and overly prescriptive, and some of the obligations they place on duty holders are onerous and do not reflect currently accepted best practice for risk management. WorkSafe is concerned about the risk of potentially serious adverse outcomes from the current regulations, and the inefficiency for both businesses and WorkSafe.

MBIE is currently planning to commence the review the Hazardous Substances regulations by the end of the 2021 calendar year. WorkSafe expects this work to take considerable time, and the size of both the review and the implementation required will be comparable to, if not significantly larger, than the work required to review and implement the plant and structures regulations. Early indicative costing of the whole of life cost of implementation is $25-$30m.

Hazardous Work

The hazardous work regulations will pick up several older pieces of regulation and take a more principles-based approach to the management of hazardous work – types or methods of work that involve higher risks – forestry is an example of this. We have been advised that the policy work on these regulations is likely to commence after the hazardous substances regulations review unless additional policy resource can be secured (both at MBIE and WorkSafe).

Initial scoping has not yet been undertaken, but we were advised that amount of work involved would be similar to Plant and Structures. This would put the indicative whole of life cost of implementation at around $20m.

Other Pressures

Confidentiality

Covid-19 (possible 2022 Budget Bid)

This bid seeks funding to scope, recruit, train induct and support a cohort of 30 inspectors that focuses on ensuring businesses and organisations comply with current and future COVID-19 controls. Its functions would include:

- QR code and mandatory record-keeping requirements

- Border worker testing

- Border worker vaccinations

- Workplace physical distancing, PPE usage and IPC

- Supplying staffing for the AOG Compliance Hub and responding to breach notifications (at higher Alert Levels).

The COVID-19 cohort would also contribute to the all-of-government COVID-19 response, including staffing for the COVID-19 Compliance Hub and cross-agency compliance work programmes.

Regulatory Improvement (Ngā Paiaka)

Ngā Paiaka (strong regulatory foundations) is a targeted regulatory improvement programme that explores and addresses known gaps in regulatory oversight or activity. The programme

has identified four gaps in regulatory oversight or activity and is proposing the following actions[101]:

- *Authorisations* – build on the recent Authorisations Review scoping work and develop a programme of regulatory solutions to address its initial findings, including resourcing required to follow up on conditions.

- *Exemptions* – review and build on initial findings from the review undertaken by Operational Policy in 2018, along with findings from the Legislative Obligations exemptions focus in 2020, including resourcing required to follow up on conditions.

- *Delegations* – development of a delegations policy (including the use of limited powers), review of all regulatory delegations to ensure alignment with the new policy, and develop or refresh processes and procedures for delegation decisions.

- *Decision-making framework* – establish a robust decision-making framework that includes decisions regarding interventions and the triage process. Consider regulatory philosophy and risk profile as part of this work.

This work is yet to be scoped, costed and approved by the Senior Leadership Group.

Adventure Activities

Following the Whakaari/White Island eruption in 2019, the government agreed to undertake a targeted review of the Health and Safety at Work (Adventure Activities) Regulations, to understand whether changes were needed to address the risks associated with natural hazards. MBIE undertook initial work that indicated some changes could be made and is currently preparing a public discussion document which will contain proposals for change. Policy decisions about this are scheduled to be made by the end of 2021. Depending on the nature and level of changes agreed by government, it is probable that changes will be implemented by WorkSafe.

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[101] *Ngā Paiaka: Strong foundations*, Senior Leadership Group discussion paper, July 2021.

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Appendix 16: Stakeholders interviewed

SageBush thanks the following organisations and individuals who contributed insights to this report:

WorkSafe Board

- Ross Wilson

- Bill Moran

- Paula Rose.

External Stakeholders

- Cory Bourne, New Zealand Council of Trade Unions – Te Kauau Kaimahi (CTU)

- Dom Kalasih, Ia Ara Aotearoa Transporting New Zealand

- Dr John Heydon, Australian New Zealand Society of Occupational Medicine (ANZSOM)

- Francois Barton, Business Leaders' Health & Safety Forum (BLHSF)

- Kirk Hope, BusinessNZ

- Mike O'Brien, Health and Safety Association of New Zealand (HASANZ)

- Nick Leggett, Ia Ara Aotearoa Transporting New Zealand

- Philip Aldridge, Health and Safety Association of New Zealand (HASANZ)

- Richard Wagstaff, New Zealand Council of Trade Unions – Te Kauau Kaimahi (CTU)

- Virginia Burton-Konia, Accident Compensation Corporation (ACC).

WorkSafe

- Allan Frost

- Angele Toomey

- Beau Havler

- Braden Sloper

- Bronwyn Turley

- Catherine Epps

- Catherine Gardner

- Catherine Spiller

- Chris Matsis

- Daniel Hummerdal

- Darren Handforth

- Debra Despard

- Esther Lau

- John Munro
- Ketan Chandu
- Kevin Lampen-Smith
- Lisa Kinloch
- Lucy McDonald
- Mark Johnson
- Mark Keenan
- Mike Hargreaves
- Mohi Apou
- Monica Shim
- Parau Tupangaia
- Pelin Fantham
- Phil Parkes
- Quin Carver
- Simon Humphries
- Tony Hetherington
- Tracey Conlon
- Victoria Hinson.

MBIE

- Alan Vandermolen
- Elizabeth Thomas
- George Mason
- Katheryn Hazlewood
- Lisa Collins
- Melleny Black
- Michael Bird
- Michael Ross
- Paul Stocks
- Rebecca Foley
- Sarah Hutchings
- Simon Wakefield.

Treasury

- Richard Baird.

Appendix 17: Information Sources

Key documents reviewed and supporting data used in this report include:

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Appendix 18: Terms of Reference

WorkSafe New Zealand Strategic Baseline Review 2021

Background

In July 2013, the Government released the *Working Safer* document which contained its response to the recommendations of the Royal Commission on the Pike River Coal Mine Tragedy (October 2012) and the Report of the Independent Taskforce on Workplace Health and Safety (April 2013).

WorkSafe was formed in December 2013, with a legislative mandate established under the WorkSafe New Zealand Act 2013. *Working Safer* set expectations for health and safety outcomes and provided a blueprint for strategy and action.

- Since 2013, the government has made significant new investment into the work health and safety regulatory system. This has included funding support to:

- Build the major hazard facilities activity

- Support the Canterbury rebuild;

- Build the Working Safer functions, including:
    - Operational policy and practice
    - Work related health
    - Hazardous substances
    - Injury prevention programmes
    - Technical services
    - Guidance.

Pre-WorkSafe, $42.281 million was appropriated to Health and Safety Services for the Department of Labour (2011/12). WorkSafe funding in its first full financial year was $87.061 million (2013/14) and is $111.595 million currently (2020/21). In parallel, since inception, WorkSafe has recorded progress against a number of system targets including work-place fatalities and serious injuries. However, New Zealand's rates of fatalities and serious injuries from acute workplace injuries have now plateaued. Further work is required to ensure these rates are reduced.

A Value for Money review was completed in August 2016 which indicated alignment between WorkSafe activities and the Working Safer blueprint, and a conscious effort was being made to address the quantum of its corporate costs.

WorkSafe commenced its Modernisation programme in 2019 to develop its capabilities and capacity as a modern, insights-led health and safety regulator.

WorkSafe has indicated that it continues to face a mix of cost pressures. These include costs for addressing significant events such as the Whakaari/White Island investigation, developing

capabilities such as its Energy safety function, and digital transformation cost pressures as it continues its modernisation programme.

MBIE has therefore commissioned this WorkSafe Strategic Baseline Review. The review will provide an assurance around WorkSafe's management of resources, insights to further inform WorkSafe's planning, and support MBIE in its advice to Ministers on funding needs.

Scope, Product and Principles

Scope

The purpose of the review is to:

Assess whether WorkSafe is managing its resources efficiently and effectively, and provide advice on the rationale, quantum and targeting of any additional funding.

The review will consider four main questions:

1. Does WorkSafe's mix of activities best deliver on its role, strategy and government priorities? (doing the right things[102])

2. How well is WorkSafe performing? (efficiency of resource use, and value add/ quality of outputs delivered)

    – The review will consider opportunities for improvement across 1 and 2

3. What cost pressures does WorkSafe face over the next four years and do they align with its role, strategy and government priorities?

4. Options to manage within different funding paths, and advice on the best path

Further questions that elaborate on these four main questions are:

a) What barriers exist to effectively delivering improved workplace health and safety?

b) What are the highest priority investments to deliver improved workplace safety and health? Does WorkSafe have a robust process for assessing these?

c) How is WorkSafe balancing its mix of activities to address workplace health issues relative to other priorities such as acute harm?

d) What is the appropriate balance between proactive (e.g. insights and inspection) and reactive (e.g. prosecution) work to achieve harm prevention? Does WorkSafe have a robust process to determine this?

Product

Three products will be generated:

a) *Interim report:* sets out context, framework and areas of focus for the review. Forwarded to Minister

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[102] This question could be rephrased as: 'How well is WorkSafe baseline expenditure aligned with its role, strategy and government priorities?'

b) *Summary Report:* provides an overall (higher level) understanding of WorkSafe's performance and future funding needs. Answers the four questions above. Forwarded to the Minister

c) *Full Report:* looks more deeply into WorkSafe trends, problem definitions, cost drivers and levers. Primary audience is WorkSafe.

This review will inform consideration of any future funding decisions.

The review owner is the General Manager Entity Performance and Investment, MBIE. All products will be tested with the review owner prior to distribution.

Principles

The review process will be:

- open and transparent – ensuring that there are 'no surprises' for either WorkSafe or MBIE

- external Lead driven – to ensure relevant external expertise is brought to the review

- responsive – to exploring areas identified by the WorkSafe Chair and Chief Executive as needing further consideration

- evidence based – conclusions are supported by evidence to the extent possible

- insightful – generate an additional layer of insights for WorkSafe to inform its planning

- efficient – ensuring compliance costs for gathering information is minimised

- sensitive to the need to ensure appropriate protection of information

Scope exclusions

This review is not intended as an evaluation of the impact of the Health and Safety at Work (HSW) regulatory reforms more generally on HSW outcomes in New Zealand.

This review is not intended as an evaluation of WorkSafe's modernisation programme or target operating model, although it may have implications for them.

This review is not intended to include an assessment of funding mechanisms (e.g. appropriateness or form of particular levies) although high level observations can be drawn if the External Lead identifies significant issues in the course of the review.

Process for the review

External Lead experience and knowledge

An External Lead will be identified through a tendering process to deliver the review. The External Lead will ensure an appropriate mix of experience and knowledge is represented within its team, including:

- an ability to connect with WorkSafe and challenge its thinking

- regulatory operations expertise, along with an understanding of WorkSafe's regulatory environment and its contribution

- financial, corporate and change management expertise.

The External Lead is expected to have the capability within its team to generate a substantive evidence base (both quantitative and qualitative) to support the findings of the review. This may include (but is not limited to) longitudinal analysis of performance information, cost drivers and trends; external stakeholder and internal interviews; observation and assessment of key aspects of regulatory operations; and comparative analysis.

The External Lead will be supported by a WorkSafe contact point to facilitate information needs and access to people for the purposes of the review.

Administration

MBIE's Entity Performance and Investment Team (MBIE) will contract the External Lead and liaise with them throughout the process.

MBIE will work with WorkSafe to develop background material for the review External Lead. A WorkSafe contact point will be available through the course of the review to facilitate access to people and information.

The cost of the review will be met by MBIE. All key material (e.g. cost trend/ performance information series) generated as part of the review will be forwarded to MBIE.

The review will be subject to requests under the Official Information Act (1982). The External Lead's Summary Report will be released publicly (with any necessary redactions).

Review process

The indicative review phases are:

1. External Lead (and External Lead support) recruitment, commissioning meeting with MBIE and review of background material (May)
2. WorkSafe Board Chair, Chief Executive pre-meet with External Lead and MBIE
3. Information gathering: agency overview, full financial data set, WorkSafe strategy and financial plan, historic pattern of cost pressures and forecast of future cost pressures, evaluation and evidence of programmes
4. External Lead pre-meet with Minister: 'Minister's perspectives' meeting
5. Initial External Lead meeting with board and chief executive: Board's own reflections on WorkSafe's efficiency and effectiveness, cost pressures, along with related issues and opportunities
6. Strategic overlay and initial analysis
7. Any internal and external interviews needed (e.g. ACC)
8. Interim Report tested with Board Chair and CE, forwarded to Minister (July)
9. Detailed analysis and development of findings
10. Testing of findings with Board Chair and chief executive
11. Options development for future funding paths

12. Draft Full Report discussed with Board and Chief Executive (with draft Summary Report available)

13. Full and Summary Report finalisation (September)

14. Board Chair meeting with Minister to discuss Summary Report (October).

The External Lead will have regular 'check ins' with the Board Chair, Chief Executive and MBIE throughout the process to test thinking and ensure no surprises. These 'check ins' are also an opportunity for WorkSafe and MBIE to suggest specific lines of enquiry on individual issues.

The process will commence early May, and conclude by October.