COVERSHEET

Minister	Hon Michael Wood	**Portfolio**	Workplace Relations and Safety
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List of documents that have been proactively released		
Date	**Title**	**Author**
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27 October 2022	Cost Recovery Impact Statement: Recovering the regulatory costs for major hazard facilities	MBIE
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Information redacted **YES / NO**

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Cost Recovery Impact Statement

Recovering the regulatory costs for major hazard facilities

Agency Disclosure Statement

This Cost Recovery Impact Statement (CRIS) has been prepared by the Ministry of Business, Innovation and Employment (MBIE). It identifies and assesses options for the major hazard facilities fee and levy rates so that they:

- recover the expected future costs to WorkSafe New Zealand (WorkSafe) of overseeing the major hazard facilities regulatory regime put in place by the *Health and Safety at Work (Major Hazard Facilities) Regulations 2016* (the Regulations)
- ensure that there is sufficient levy and fee revenue to support good safety outcomes in major hazard facilities
- address the surpluses that have accrued in the fee and levy memorandum accounts
- minimise cross subsidisation amongst fee and levy payers.

The major hazard facilities regulatory regime is based on a cost recovery model, as agreed by Cabinet, and rates that came into effect on 1 September 2016. The fees and levies were made subject to review after five years, in recognition of the complexities of setting the initial rates in a new regulatory regime.

The CRIS uses information from MBIE and WorkSafe's review of fees and levies. The CRIS analysis has involved problem identification, and current and future state analysis of:

- past and future forecast regulatory activity and costs, informed by the detailed data collected by WorkSafe
- the expected future industry operating environment
- memorandum account balances.

MBIE has confidence in WorkSafe's assumptions and forecasts/projections. MBIE considers there is a sound evidence basis for the fee and levy rate changes recommended, as the analysis is based on detailed data collected by WorkSafe on the operation of its major hazard facilities regulatory activity over the last five years, WorkSafe's experience in administrating the Regulations since 2016, and its sound working relationship with industry.

Assumptions

- *Forecasting of WorkSafe's future regulatory activity costs. The options considered for the major hazard facilities fee and levy rates are based on cost modelling and forecasting with underlying assumptions. A risk is that WorkSafe's actual regulatory activity costs do not match expected costs in the future, and the durability of the major hazard facilities scheme is undermined by incorrect charging (either over- or under-charging). The analysis was based on detailed data collected by WorkSafe in the year leading up to the review. We also consulted with stakeholders, including operators, on the assumptions*

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underlying the regulatory activity and cost modelling, which informed the preferred options. MBIE and WorkSafe will monitor the regime over time to keep track of both costs and revenue.

Constraints

- *Scope of options*. A key constraint is the scope of the fee and levy review being limited to the rates only, not the underlying cost recovery mechanisms or the Regulations themselves. This is because MBIE and WorkSafe consider that the wider policy settings and circumstances have been relatively stable, and it is still appropriate to directly recover the costs of the major hazard facilities regulatory activity from operators. Therefore, no non-regulatory options eg the removal or replacement of the fee and levy scheme by other funding mechanisms were considered.

- *Depth of consultation.* MBIE and WorkSafe received five written submissions from public consultation, all of which were from current operators (of which there are 62 in total). While this is at the lower end of what was anticipated, we are comfortable that this is sufficient for the scale and nature of the changes proposed. We believe the low number of submissions can be explained by the majority of operators being comfortable with the direction of changes to levy and fee rates, as fed back to us during a workshop/webinar event attended by approximately 50 operators, and the small-scale impact on most operators of the changes.

Hayden Fenwick
Manager, Health and Safety Policy
Ministry of Business, Innovation and Employment

18 October 2022

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Executive Summary

1. Major hazard facilities (MHF) are workplaces that store or process very large amounts of particularly hazardous substances. These facilities carry significant safety, environmental and economic risks as the hazardous substances they manage have the potential to generate catastrophic events leading to workplace fatalities, serious injuries, and harm to the community. There is also the potential for harm to the wider economy and to our environment in the event of such catastrophic events.

2. Government intervention is required due to the scale of the health and safety risks at major hazard facilities, and to achieve fair sharing of regulatory costs.

3. The *Health and Safety at Work (Major Hazard Facilities) Regulations 2016* (the Regulations) came into force on 4 April 2016, which:

   a. place process safety obligations on designated MHF

   b. provide WorkSafe with regulatory functions/powers for MHF

   c. set fees and levies charged to operators of MHF to recover the cost of regulatory oversight.

4. The fees and levies are differentiated by Tier (Upper or Lower Tier) and Type (Type 1 / Type 2 / Type 3) of facility based on complexity. These rates set in 2016 were made subject to review after five years, in recognition of the complexities of setting the initial rates in a new regulatory regime.

5. MBIE and WorkSafe's analysis of fees and levies found that:

   a. **Surpluses** have built up for both the fee and the levy, as WorkSafe's regulatory costs over the last five years have been lower than originally estimated in 2016, when the regulations were first put in place.

   b. **Forecast regulatory costs** over the next five years will no longer match the revenue that is forecast to be collected by the current fee and levy rates as originally set in 2016.

   c. There is **cross subsidisation** amongst fee and levy payers (where the underpayment by some Types of facilities is covered by the overpayment by other Types of facilities) over the last five years and continuing under the current rates.

6. The MHF levy rate problem is three-fold, specifically:

   a. a **surplus** has built up over the last five years in the MHF levy memorandum account, reaching $2.544 million at the end of 2021.

   b. WorkSafe's **forecast regulatory costs** over the *next five years* are higher than the costs estimated in 2016, and therefore won't be matched by the forecast revenue. The levy rates were originally set in 2016 at a level expected to cover WorkSafe's estimated costs of the newly established Regulations. In order to effectively address the risks being managed by the Regulations, the costs of WorkSafe's expected regulatory activity funded by the MHF levy over the next five years will be greater for all operators than was estimated in 2016.

   c. some Types of facilities are paying less in levies than the cost of the regulatory activity that WorkSafe undertakes for those facilities, while some Types have

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been paying more. This means there is some **cross subsidisation** amongst levy payers.

7. The MHF fee rate problem is also three-fold, specifically:

    a. a **surplus** has built up over time in the MHF fee memorandum account, reaching $0.988 million at the end of 2021.

    b. WorkSafe's **forecast regulatory costs** of assessing safety cases over the next five-year cycle will not match the fees currently charged as originally set in 2016. The fees for assessing *new* safety cases, originally estimated in 2016 and ranging from $45,000 to $67,000, are higher for all Upper Tier operators than WorkSafe's expected assessment costs of $31,000. The fees currently charged as originally estimated in 2016 for *revised* safety cases, ranging from $20,000 to $30,000, are lower for most Upper Tier operators than WorkSafe's expected assessment costs of $28,100. Most safety case assessments over the next five-year cycle will be *revised* safety cases.

    c. there is some **cross subsidisation** amongst fee payers, as *revised* safety case fees are lower than WorkSafe's expected costs for most operators, while *new* safety case fees are higher than WorkSafe's expected costs.

8. This CRIS considers both the fee and levy problems outlined above together as part of the same process, as:

    a. the MHF regulations require a review of both fee and levy rates

    b. the overarching issues for both fee and levy rates are similar (surpluses, future expected costs different from 2016 costs, and cross subsidisation amongst payers), albeit presenting to different extents and in slightly different ways

    c. the same operators pay both fee and levies.

9. The policy objectives of reviewing of fee and levy rates are to:

    a. ensure that there is sufficient levy and fee revenue to fund the regulatory oversight activity to support safety outcomes in MHF.

    b. set fee and levy rates to fully recover the costs of the MHF regime from operators, without either surpluses or deficits building up in the memorandum accounts.

    c. minimise cross subsidisation amongst fee and levy payers.

10. This CRIS assesses three options for MHF fees and three options for MHF levy rates to achieve these objectives. The options are considered separately for both fee and levies, given that the issues do not present exactly the same. Both fees and levies are analysed over the next five years, given the fees are charged on a five-year cycle and both are charged to the same group of operators.

11. The options for levy rates are:

    a. **Option 1: Maintaining the current rates (status quo)**

       Keeping the levies at the current rates (as set in 2016), while WorkSafe's regulatory activity costs are expected to increase.

    b. **Option 2: Return surplus then move to full cost recovery rates**

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Change the levy rates to return the surplus, through a discounted rate in years 1 and 2, then move to rates that will fully recover the costs of the regulatory activity from year 3.

c. **Option 3: Full cost recovery rates**

Change the levy rates to immediately fully recover the costs of the regulatory activity, without returning the surpluses.

12. We recommend Option 2 as it matches the levy paid by operators to the actual costs of the service they receive, returns the current levy surplus to the appropriate operators, and removes the cross subsidisation amongst levy payers. While retaining the status quo levy rates would also return the levy surplus to operators, albeit at a slower pace, it would not address the cross subsidisation nor would it match the levy paid by each operator to the actual costs. It would also mean after four years that the levy memo account would move into deficit. For these reasons we consider that Option 2 for levies is – on balance –fairer and more justifiable.

13. The options for fee rates:

a. **Option 1: Maintaining the current rates (status quo)**

Keeping the fees at the current rates (as set in 2016), while WorkSafe's regulatory activity costs are expected to increase.

b. **Option 2: Return surplus then move to full cost recovery rates**

Change the fee rates to return the surplus to payers, through the same discounted fee for all **revised** safety case assessments (including for additional facilities) for the next five-year cycle (2023 to 2027). The surplus is returned to the existing operators who have contributed to the surplus to date. After the next five-year cycle, the revised safety case fee then moves to full cost recovery to recover WorkSafe's expected regulatory activity costs.

The fee for a **new** safety case is adjusted to move to full cost recovery from year 1 (2023), resulting in a lower rate than currently charged for all Types of operators. As new MHF operators have not contributed to the current surplus, they should not receive the discounted rate over the next five years that is being applied to the revised safety case fees.

c. **Option 3: Full cost recovery rates**

Change the fee rates to immediately fully recover the costs of the regulatory activity, without returning the surpluses.

14. We recommend Option 2 for the fees, as it matches the fee paid by operators to the actual costs of the service they receive, returns the current fee surplus to the appropriate operators, and removes the cross subsidisation amongst fee payers. While retaining the status quo fees would still provide sufficient fee revenue overall for WorkSafe to carry out safety case assessments, the status quo would not return the fee surplus to the appropriate payers, nor address the cross subsidisation or match the fee paid by each operator to the actual costs of the safety case assessment. For these reasons we consider that Option 2 for fees is more equitable and justifiable.

15. Therefore, MBIE and WorkSafe's recommended options for both fee and levy rates is *Option 2: Return surplus then move to full cost recovery rates* because they:

a. ensure sufficient revenue to support good safety outcomes in MHF

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b. set fee and levy rates to fully recover the costs of the MHF regime from operators

c. return past surpluses back to operators

d. minimise cross subsidisation amongst fee and levy payers.

16. Under the recommended options, the fee and levy rates for most operators would:

a. decrease for a period of time until the surpluses were expended

i. For levies, a discounted levy rate would apply for two years over year 1 and year 2.

ii. For fees, the discounted fee for revised safety cases would apply for the next five-year cycle.

b. then increase to full cost recovery rates.

17. The following scenarios show the impact of **Option 2** over the next) five-year cycle on:

a. A large operator with seven facilities that are both Lower and Upper Tier and of different Types would experience a total benefit of $32,900.

b. A large operator with four facilities that are all Upper Tier and different of Types would experience a total benefit of $41,800.

c. A medium operator with four facilities that are both Lower and Upper Tier and different Types would experience a total benefit of $78,100.

d. A small operator with one facility that is Lower Tier of one Type would experience a total benefit of $4,200.

18. Overall, we do not expect the proposed rates to have a measurable impact on the operators of such facilities or their demand for MHF services from the regulator.

19. MBIE and WorkSafe conducted public consultation late January to early March 2022, to understand operator views of the impacts of the rate changes and the underlying proposals.

20. Stakeholders broadly supported **Option 2** for both fee and levy rates. Submitters shared with MBIE and WorkSafe that any changes to levy and fee rates will not have a significant impact on them as operators, nor on their businesses. Operators fed back that the only substantial impact on their businesses is being aware of the changes to levy and fee rates for budgeting purposes and to have certainty for the next five years.

21. Subject to final Government decisions, the proposed option would be implemented by amendments to the Regulations by early [Q1] 2023, with effect from April 2023.

Section 1: Diagnosing the policy problem

The major hazard facilities regulatory regime

22. The *Health and Safety at Work (Major Hazard Facilities) Regulations 2016* came into effect on 4 April 2016. WorkSafe New Zealand is the regulator responsible for the implementation of the Regulations and the oversight of MHF.

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23. MHF are workplaces that store or process very large amounts of particularly hazardous substances. MHF typically include chemical manufacturing sites, gas processing plants, liquid petroleum gas facilities, and other manufacturing and storage depots.

24. The Regulations aim to prevent or mitigate the effects of incidents involving hazardous substances at MHF. MHF carry significant safety, environmental and economic risks as the hazardous substances they manage have the potential to generate catastrophic events similar to those seen around the world in the chemical industry. Such major incidents can cause multiple fatalities and widespread injury to workers at the facility and to others in the surrounding community. There is also the potential for harm to the wider New Zealand economy and to our environment in the event of such catastrophic events.

25. The Regulations specify lower and upper threshold quantities for particular hazardous substances and set different process safety requirements for businesses depending on which thresholds are met.

26. MHF that hold specified hazardous substances above threshold quantities must notify WorkSafe, who will determine whether they are either upper or lower tier facilities based on the hazardous substances quantities they hold.

27. New Zealand currently has 130 MHF, 75 Lower Tier facilities and 55 Upper Tier facilities. These are run by 62 operators[1].

WorkSafe: New Zealand's workplace health and safety regulator

28. WorkSafe is New Zealand's primary workplace health and safety regulator. Other agencies, such as Maritime New Zealand, Civil Aviation Authority and Waka Kotahi regulate discrete areas of health and safety.

29. The Regulations require businesses to have additional systems and controls in place, which in turn need considerable specialised activity from WorkSafe. This specialised activity is over and above WorkSafe's normal service delivery to all New Zealand businesses.

Operator obligations

30. In addition to its obligations under the *Health and Safety at Work Act 2015*, all operators of MHF must:

    a. carry out a safety assessment to identify potential major incidents and major incident hazards

    b. have and test an emergency plan

    c. put in controls to manage risks

    d. consult with the local authority on their emergency plan (Regulation 31)

    e. notify the local authority in the event of a major incident (Regulation 67).

[1] As of 30 June 2021. Public information about designated MHF is available at MHF public information | WorkSafe

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31. All Upper Tier MHF must have a safety case. A safety case:

    a. documents the hazards and risks that may lead to a major incident at a facility, and the control of those hazards and risks.

    b. is written demonstration that an operator has the ability and means to control major incident hazards effectively.

32. All Lower Tier MHF must have a Major Accident Prevention Policy (MAPP) that deals specifically with major incident hazards. While a MAPP does not have to be submitted to WorkSafe, it should be available for inspection and available to workers at the facility.

WorkSafe provides additional services to operators of MHF

33. As operators of MHF have additional requirements under the Regulations, they receive additional services from WorkSafe.

34. WorkSafe has an additional audit and enforcement role for MHF, focussing on the systems and controls behind workplace practices.

35. Operators of MHF require specialist, rather than general, health and safety inspectors to carry out the regulatory functions, and the Operator–WorkSafe relationship is more targeted and ongoing, than for other businesses

36. Operators of Upper Tier MHF receive the following specific services from WorkSafe:

    a. **Safety cases** – a specific regulatory role that involves administration, assessment, acceptance, and amendment of new/revised safety cases, and making a decision on whether to reject, or accept with or without conditions. The process of assessing a safety case requires WorkSafe to be satisfied that the safety case is complete and appropriate for the nature of the facility and activities and demonstrates that the operator has engaged with workers and is compliant with the Regulations. The Regulations require all Upper Tier facilities to go through this process at least once every five years (or more frequently depending on conditions, revisions, and amendments). Safety case assessments (both new and revised) are funded from MHF fees.

    b. **Designation into regime** – a specific regulatory role that involves reviewing designation notifications to ensure that the information provided with the notification is correct, and allows WorkSafe to determine if the facility is an Upper or Lower Tier facility or neither. All Upper and Lower Tier facilities are required to go through this process initially.

    c. **Regulatory oversight activity** – this involves a range of other activities that relate to engagement between WorkSafe and facilities over and above what would be expected for engagement with other businesses, including:

        i. **Proactive inspections** (ie, monitoring activity and support) – these require preparation and planning before one or two inspectors visit the facility, of which the duration is between one and three days. During the inspection inspectors will engage with duty holders, provide information around the requirements of the Regulations, and monitor compliance with the facility's safety case and the Regulations. Inspectors then prepare a report and engage with the duty holder on their findings.

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ii. **Processing notifiable incident reports relating to MHF** – effort is required by WorkSafe in administration, inspector time, peer review and sign-off. On average, a facility will have three notifiable incidents every two years.

iii. **Reactive inspections** – these require preparation and planning before inspectors visit the facility, and reactive inspections generally take one day. The inspectors ensure that incidents are investigated; an appropriate regulatory response is taken to promote learning from such incidents more widely. The inspectors then prepare their report and engage with the duty holder. Follow-up can vary depending on the nature of the visit.

d. Over a five-year cycle, Upper Tier facilities can generally expect two proactive inspections and three reactive inspections.

37. Operators of Lower Tier MHF also receive specific services from WorkSafe, including designation and regulatory oversight activity. The regulatory activity is generally the same as for Upper Tier Facilities (discussed above), however inspections may be less frequent and shorter ie Lower Tier facilities can expect three proactive inspections over a five-year cycle.

The rationale for cost recovery of major hazard facilities regulatory activity

38. In 2013, Cabinet agreed that the costs to WorkSafe for administering the MHF regime would be more directly recovered from the operators of MHF [CAB Min (13) 24/11] because:

    a. the regulatory oversight of MHF is additional to WorkSafe's general work health and safety services

    b. only operators of MHF get the benefit of these services.

39. The direct cost recovery from operators for MHF regulatory activity meets the Treasury and Auditor-General guidelines on public sector charging for industry goods and private goods:

    a. Industry (or club) good – where users can be excluded from the benefits at low cost (unlike a public good), and users can share without detracting from use by another. The MHF levy is an example of charging for an industry good.

    b. Private good – where users can be excluded from the benefits at low cost, but its use by one person conflicts with use by another. The MHF fee for a safety case assessment is an example of a private good.

40. For MHF, the two mechanisms for cost recovery are fees and levies:

    a. Fees are generally better suited for private goods, ie specific services provided directly to individuals, such as safety case assessments of individual facilities

    b. Levies are more suited to less defined activities provided to an identifiable group (industry or club goods), such as WorkSafe's regulatory oversight activity that covers all operators of MHF.

41. The objective is to set fees and levies to fully cost recover WorkSafe's MHF regulatory activities, otherwise the MHF regime would be subsidised from the Health and Safety

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at Work levy that is paid by all New Zealand businesses, but who would not receive a direct benefit from the MHF regulatory activities.

42. In 2016, Cabinet agreed to the cost recovery model and rates that came into effect on 1 September 2016.[2]

43. The Regulations subsequently provide for a full cost recovery mechanism with the following components:

    a. Fees for the assessment of safety cases (for Upper Tier facilities only), with a lower fee for the assessment of a revised safety case.

    b. For operators of multiple Upper Tier MHF, a fee discounted by 20 per cent for the assessment of a safety case for each additional facility.

    c. An annual levy for regulatory oversight activity that is differentiated between Lower Tier and Upper Tier MHF representing the complexity of operation.

    d. Further differentiation by Tier for both fee and levy, which is based on the risk of operation determined by the quantities of hazardous substances in the facility. Note that differentiation by Tier was included because it was considered that the level of risk and complexity of a facility would be proportionate to the regulatory activity required of WorkSafe, and therefore costs for different Types of facilities were varied. These changes were made to address stakeholder concerns in 2016.

Cost recovery is managed over time by a memorandum account

44. As part of the 2016 decisions on the fees and levies, Cabinet directed WorkSafe to record revenue against costs (expenditure) in memorandum accounts for both the MHF fee and the MHF levy.

45. Memorandum accounts record the accumulated balance of surpluses and deficits incurred in the provision of services and activities on a full cost recovery basis. The purpose of memorandum accounts is to:

    a. increase transparency of charging practices

    b. protect against an agency inadvertently benefiting from over-recovery

    c. focus attention on avoiding possible over- or under-recovery, and

    d. establish an even-handed regime in terms of the treatment of short-term surpluses and deficits, by applying a long-term perspective.

46. The expectation is that fees and levies are set so that the balance of each memorandum account will trend towards zero over a reasonable period of time.

47. The memorandum accounts smooth the surpluses and deficits over time and any deficits are met from Crown Accounts (ie tax payer funding) while any surpluses are returned to levy and fee payers by dropping the rates until the surplus is returned.

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[2] The 2016 Regulatory Impact Statement is available at: https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-full-cost-recovery-worksafes-regulatory-functions-major-hazard-facilities

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48. The Regulations require that a review of these levies and fees be started five years after the levies and fees came into effect, and that such a review would consider any surplus or deficit that has built up in the fee and levy memorandum accounts.

Current fee and levy rates

49. The MHF fees and levies are set out in Schedule 8 of the Regulations.[3] They are differentiated by Upper and Lower Tier, and by Type of facility based on complexity, as outlined in Tables 1 to 3 below.

Table 1: Major Hazard Facility Types

Type	Characteristics
Type 1	Every specified hazardous substance is only: • present, or likely to be present, for the purposes of storage, repacking, or distribution • circulated in a closed circuit (including a refrigeration system) • used in a way that immediately consumes or dilutes the substance so that it ceases to be a specified hazardous substance.
Type 2	A major hazard facility is Type 2 if it is neither Type 1 nor Type 3.
Type 3	If the specified hazardous substances present, or likely to be present, are used in a complex process that results in a physical or chemical change to the substances. A complex process includes the following: multiple processes (other than the processes set out for Type 1 facilities above); one or more chemical reactions; one or more processes at high or low temperature.

[3] Available at: Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (LI 2016/14) (as at 01 December 2017) Schedule 8 Fees and levies – New Zealand Legislation

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Table 2: Major Hazard Facility levy rates

Category of major hazard facility		Levy ($)	Number of Facilities[4]	Number of Operators[5]
Lower Tier	Type 1	12,500	41	22
	Type 2	15,000	28	14
	Type 3	18,000	6	5
Upper Tier	Type 1	23,000	31	21
	Type 2	28,000	9	7
	Type 3	34,000	15	6

Table 3: Major Hazard Facility fees

Facility Type		Safety case assessment		Revised safety case assessment	
		Fee ($)	Reduced fee for additional facility ($)	Fee ($)	Reduced fee for additional facility ($)
Upper Tier	Type 1	45,000	36,000	20,000	16,000
	Type 2	56,000	44,800	25,000	20,000
	Type 3	67,000	54,000	30,000	24,000

50. The fee and levy rates were based on WorkSafe's expected MHF regulatory activity determined in 2016 when the fees and levies were first set.

51. The Regulations set out the charging of fees and levies:

    a. Levies are an annual payment charged on 1 July of each year, or on entry to the scheme for new facilities.

    b. Safety case fees are charged on entry to the scheme for new facilities, and subsequently on a five-year cycle, with the date depending on when the safety case is submitted, and the assessment invoiced by WorkSafe.

[4] As of 12 July 2022

[5] In paragraph 20, we note there are 62 operators of major hazard facilities, however the number of operators in this table exceeds that because some operators have facilities of more than one Type. The column represents the number of operators for each Type of facility.

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Problem definition

52. MBIE and WorkSafe's review of the fees and levies identified three problems:

    a. **Surpluses** have built up for both the fee and the levy, as WorkSafe's regulatory costs over the last five years have been lower than originally estimated in 2016, when the regulations were first put in place.

    b. **Forecast regulatory costs** over the next five years will no longer match the revenue that is forecast to be collected by the current fee and levy rates as originally set in 2016.

    c. There is **cross subsidisation** amongst fee and levy payers because the fees and levies that are charged do not match the costs for each activity by Type of facility, over the last five years and also forecast over the next five years.

53. These problems are outlined further below first for the levies and then for the fees.

MHF levy rate problem definition

54. Firstly, a **surplus** has built up over the last five years in the MHF levy memorandum account, reaching $2.544 million at the end of 2021, as shown in Table 4 below. WorkSafe's regulatory activity and costs over the *first five years* of the Regulations have been less than was estimated when the levy rates were originally set in 2016, resulting in the surplus in the levy memorandum account.

55. Secondly, **forecast regulatory costs** over the *next five years* are higher than the costs estimated in 2016, and therefore won't be matched by the forecast revenue. The levy rates were originally set in 2016 at a level expected to cover WorkSafe's estimated costs of the newly established Regulations. In order to effectively address the risks being managed by the Regulations, the costs of WorkSafe's expected regulatory activity funded by the MHF levy over the next five years will be greater for all operators than was estimated in 2016, and particularly for Upper Tier operators, who will be paying between $5,800 and $7,000 too little in levy each year, compared to the expected costs.

56. This is also shown in Table 4 below, where each year from 2022 onwards, the expenditure will be greater than the revenue by between Confidential advice to Government annually, as WorkSafe's future regulatory activity and costs increase. The current surplus will be slowly depleted until it goes into negative balance in 2027.

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Table 4: MHF levy revenue and expenditure actual and forecast 2017 to 2027

57. Thirdly, some Types of facilities are paying less in levies than the cost of the regulatory activity that WorkSafe undertakes for those facilities, while some Types have been paying more. This means there is some **cross subsidisation** amongst levy payers (where the underpayment by some Types of facilities is covered by the overpayment by other Types of facilities).

58. Table 5 shows total MHF levy revenue and expenditure by averaged number of Tier and Type facilities for the last five years, 2016 to 2021

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Confidential advice to Government

59. The figures in Table 5 show that over the last five years:

    a. The levy rates do not match the costs for each activity, and there is some cross subsidisation amongst the different types of levy payers.

Confidential advice to Government

60. While there is an overall surplus of $2.544 million in the levy memorandum account, the levy rates are currently set:

    a. too high for some operators leading to some operators overpaying for services they receive from WorkSafe, and a surplus to build up

    b. too low for other operators leading to some operators underpaying for services they receive from WorkSafe, and a deficit.

61. This cross subsidisation is expected to continue over the next five years of the regime, but will change in nature as the expected WorkSafe regulatory activity and therefore future costs change by Tier and Type. In particular Upper Tier facilities will start being undercharged for the services they receive from WorkSafe under the current levy rate structure, paying between $5,800 and $7,000 too little in levy each year, compared to the expected costs.

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MHF Fee problem definition

62. Firstly, a **surplus** has built up over time in the MHF fee memorandum account, reaching $0.988 million at the end of 2021, as shown in Table 6 below. WorkSafe's regulatory activity and costs over the first five years of the Regulations have been less than was estimated when the fees were originally set in 2016, meaning a surplus has built up in the fee memorandum account. The Confidential advice to Government Confidential advice at the end of 2027, after the next five-year cycle of safety case fees.

Confidential advice to Government

63. Secondly, WorkSafe's **forecast regulatory costs** of assessing safety cases over the next five-year cycle will not match the fees currently charged as originally set in 2016. The fees for assessing *new* safety cases, originally estimated in 2016 and ranging from $45,000 to $67,000, are higher for all Upper Tier operators than WorkSafe's expected assessment costs of $31,000. The fees currently charged as originally estimated in 2016 for *revised* safety cases, ranging from $20,000 to $30,000, are lower for operators than WorkSafe's expected assessment costs of $28,100, for all but Type 3 operators. Most safety case assessments over the next five-year cycle will be *revised* safety cases.

64. Thirdly, there is some **cross subsidisation** amongst fee payers. Financial data on the safety case fee revenue and expenditure for the last five years, 2016 to 2021 is summarised in Table 7 below.

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Confidential advice to Government

65. The figures in Table 7 show that the over last five years: the revenue and expenditure for 57 *new* safety cases and 2 *revised* safety cases[6]:

    a. WorkSafe collected more safety case fee revenue from all facility Types than it spent assessing the safety cases (shown as surpluses across all three facility Types).

    b. Confidential advice to Government

    c. There is an overall surplus of $988,000 in the fee memorandum account. This demonstrates that the fee rates did not match the costs for each activity, and fee payers had overpaid for services that they received from WorkSafe in this five-year period.

66. This cross subsidisation will continue over the next five years of the regime, but will change in nature, as *revised* safety case fees will be lower than WorkSafe's expected costs for all but Type 3 facilities, while all *new* safety case fees are significantly higher than WorkSafe's expected costs, by up to $36,000 too much for Type 3 facilities. (Almost all safety case assessments over the next five years will be for revised safety cases.)

This CRIS considers both fee and levy problems at the same time

67. This CRIS considers both the fee and levy problems outlined above together as part of the same process, as:

    a. the MHF regulations require a review of both fee and levy rates

    b. the overarching issues for both fee and levy rates are similar (surpluses, future expected costs different from 2016 costs, and cross subsidisation amongst payers), albeit presenting to different extents and in slightly different ways

    c. the same operators pay both fee and levies.

[6] Note that almost all safety cases assessed and fees paid over the first five years of the MHF regulations were for new safety cases, with very few revised safety cases, given it was a new regime and safety cases are assessed on a five-year cycle.

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68. The CRIS will consider options separately for both fee and levies, given that the issues do not present exactly the same. Both fees and levies are analysed over the next five years, given the fees are charged on a five-year cycle and the same operators pay both fees and levies.

Surpluses for both fee and levies are due to differences in implementation from original assumptions in 2016

69. Surpluses have built up in both the fee and levy memorandum accounts since establishment. The surpluses are shown in Table 8 below.

Table 8: MHF fee and levy memorandum accounts

$000	TOTAL BALANCE	ACTUAL 2021	ACTUAL 2020	ACTUAL 2019	ACTUAL 2018	ACTUAL 2017
Memorandum Accounts						
MHF Levy						
Revenue	12,670	2,560	2,645	2,635	2,636	2,194
Expenditure	(10,126)	(2,573)	(1,745)	(1,744)	(2,370)	(1,694)
Total surplus/(deficit)	**2,544**	**(13)**	**900**	**891**	**266**	**500**
Safety Case Fee						
Revenue	2,862	3	1,866	783	109	101
Expenditure	(1,874)	(6)	(1,068)	(434)	(238)	(128)
Total surplus/(deficit)	**988**	**(3)**	**798**	**349**	**(129)**	**(27)**

70. Surpluses for both fee and levy have built up due to differences in the operational approach from that anticipated under the original assumptions in 2016, including:

    a. Lower staff costs, due to considerably fewer full time equivalent (FTE) staff being recruited in the first few years, and a lower average salary for Specialist Inspectors than estimated when the fees and levies were established.

71. The levy surplus is also due to some costs factored into the MHF levies that haven't been incurred, including:

    a. Travel, training and conference expenditure costs were less than expected due to a focus on safety case assessments, which are mainly desk-based, and Covid-19 restrictions.

    b. Fewer site inspections than anticipated due to lower FTE capacity, a focus on safety cases and fewer site visits in 2020 and 2021 due to Covid-19 restrictions.

    c. Anticipated vehicle operating costs and depreciation have not been incurred.

    d. Fewer notifiable incidents than anticipated, particularly at the start of the regime. The number has been increasing year on year, which likely reflects growing operator awareness of when incidents must be notified.

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e. Contracting of external expertise was lower than anticipated.

72. The fee surplus is also due to lower costs to assess safety cases as:

    a. Safety case assessments are being done in-house, rather than outsourcing work to an external resource.

    b. Safety case assessments are mostly desk-based.

    c. Assessments of new safety cases have taken on average less hours than expected for WorkSafe to make a decision, as future site inspections to validate aspects of the safety case are scheduled post-decision, rather than inspections being conducted prior to the decision being issued.

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How the status quo is expected to develop if fees and levies do not change while WorkSafe's costs increase

73. WorkSafe now has good information on the actual costs of administering the MHF regime, which was not possible when the initial fee and levy amounts were set in 2016 as it was a wholly new regime. This detailed information on historic past costs has informed the forecasting of levy and fee expenditure, revenue and balance (surplus/deficit) for the next five-years, if fees and levies do not change and as WorkSafe incurs increased regulatory costs required to support the safety outcomes of the regime.

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74. The forecast figures (ie columns *forecasted 2022 – 2027)* in Table 9 show how the status quo is expected to develop if the fees and levies do not change while WorkSafe incurs higher regulatory costs required to support the safety outcomes of the regime.

a. For **levy**: the forecast revenue and expenditure:

i. WorkSafe would continue to maintain levy surpluses in the shorter term (2022 to 2026), albeit at a lower balance because the surplus is slowly expended to meet higher regulatory costs over time.

ii. Once the surplus is eroded as WorkSafe incurs higher regulatory costs to provide MHF services, the levy memorandum account balance will go into deficit, Confidential advice to in 2027, as levy revenue levels become unsustainable beyond this time.

iii. If the levy rates were not reviewed, WorkSafe would need to consider reducing services, or run the memorandum account into a deficit from 2027.

b. For **fee**: the forecast revenue and expenditure:

i. WorkSafe would continue to maintain its fee surplus over the next five years, ending with a slightly increased surplus of Confi denti in 2027 (compared to the surplus of $996,000 in 2022).

ii. If the fee were not reviewed, in 2023 to 2027:

(1) operators will be overcharged for any new safety cases

(2) most operators would be undercharged for their revised safety cases, resulting in a surplus that would continue to fluctuate year-on-year.

Objectives sought in relation to the policy problem

75. The policy objectives are (in order of priority) to:

a. Ensure that there is sufficient levy and fee revenue to fund the regulatory oversight activity to support safety outcomes in MHF

b. Ensure that fee and levy rates fully recover the costs of the MHF regime from operators, without either surpluses or deficits building up in the memorandum accounts.

c. Minimise cross subsidisation amongst fee and levy payers.

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

Cost recovery objectives

76. The cost recovery objectives for assessing the options are set out in Table 10. These criteria are from the cost recovery guidance issued by the Auditor-General and the Treasury.[7]

Table 10: Cost recovery objectives for analysing options

Objectives	Rationale	Approach to the analysis
Fairness	The fees and levies are paid by the appropriate users who benefit from the services or who create the risk that the service is designed to manage.	The option should fairly apply the cost of the service provided to the appropriate operators who benefit from them or create the risk, and minimise inequity by not allowing surpluses or deficits to build up.
Justifiability	The costs recovered through fees or levies should reasonably relate to the goods or services charged for and cross-subsidisation is eliminated where possible.	The option should reasonably relate to the services charged for and not cross subsidise amongst fee and levy payers.
Efficiency	The fees and levies should be no higher than necessary to provide services to the desired level of quality, enabling more efficient allocation of resources. Fees and levies should be structured to closely reflect the costs needed to provide the service to the individual or organisation.	The option should ensure the fee and levy rate matches the cost of providing the service to the operator, and at the desired level of quality.

77. All options being considered meet four further cost recovery objectives. We do not specifically analyse each option against these, as each option rates the same or similar against these objectives. These are:

    a. **Authority** – there must be legal authority to charge a fee or levy for the goods and services provided. This is provided for by sections 211(k)(xiii) and 215 of the *Health and Safety at Work Act 2015* for all options.

    b. **Consultation** – stakeholders have had the opportunity to contribute to the setting of the cost recovery model through the consultation process, and to consider and comment on the options.

    c. **Transparency** – stakeholders have the opportunity to understand the costs of services that are charged to operators through the consultation process.

[7] See in particular Part 2 of *Setting and administering fees and levies for cost recovery: Good practice guide;* Office of the Auditor-General, August 2021

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d. **Effectiveness** – the level of funding should be fit for purpose, with the fee and levy rates at a level to provide sufficient funding to support the safety outcome of the Regulations. All options are more or less effective in providing sufficient funding (noting that for status quo option for levy rates, the costs will eventually exceed revenue at current rates, but only gradually over time).

Main cost drivers for major hazard facilities regulatory activity

78. Table 11 below outlines WorkSafe's MHF activities, based on the average number of days for each activity, over the next five years. These activities are the main cost drivers recovered by either the MHF fee or levy.

Table 11: WorkSafe's MHF activities – average number per year over the next five-years

		Designation (levy)		New Safety Cases (fee)		Revised Safety Cases (fee)		Site inspections (levy)		Notifiable incidents (levy)	
Facility Type		Number	Days taken for each	Number	Days taken for each	Number	Days taken for each	Number	Days taken for each	Number	Days taken for each
Lower Tier	**Type 1**	8	3.3					11	14.0	34	2.0
	Type 2	4	3.3					14	14.0	28	2.0
	Type 3	2	3.3					3	14.0	5	2.0
Upper Tier	**Type 1**	4	3.3	0.2	25	6.4	20	32	17.0	32	2.0
	Type 2	1	3.3	0.2	25	1.4	20	7	17.6	7	2.0
	Type 3	1	3.3	0.2	25	3.2	20	17	21.5	34	2.0
Total p.a.		**20**		**0.6**		**11**		**84**		**140**	

79. Table 12 below summarises the costs for WorkSafe's MHF regulatory activities, by activity and facility type.

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Table 12: WorkSafe's MHF activities and costs

Facility Type		Costs by activity		
		New safety case assessments (recovered by fees)	Revised safety case assessments (recovered by fees)	Regulatory oversight activity (recovered by levy)
Lower Tier	Type 1			$14,600
	Type 2			$17,600
	Type 3			$19,900
Upper Tier	Type 1	$31,000	$28,100	$28,800
	Type 2	$31,000	$28,100	$35,000
	Type 3	$31,000	$28,100	$39,900

80. A key finding of the fee and levy review is that **the costs for safety case assessments are the same across all facilities**, regardless of Type. When the fees were set originally in 2016, safety case fees were differentiated between Type of facility to allow for expected differences in site complexity, with more complex facilities being charged more.

81. WorkSafe has found however that the different fees based on Type of facility have not reflected the actual costs. In practice, the costs for safety case assessments have been similar across the three Types of facilities, because WorkSafe's level of activity is driven by both the complexity of the facility and the level of expertise operators have, which tends to be greater for the more complex Type 3 facilities. These effects have tended to balance each other out, meaning that the costs for safety case assessment are in fact similar for all Types.

Underlying cost assumptions for the next five-year cycle

82. Compared to the assumptions and costs in 2016, the key changes are:

    a. The forecast number of facilities is lower than estimated in 2016 and is based on current numbers, with a further slight reduction forecast based on expected trends.

    b. Overall WorkSafe FTE headcount for MHF activity is unchanged, but there is a slight difference in team composition reflecting the experience of skillsets required built into the current structure of the MHF team.

    c. Internal charges are based on a methodology consistent with the 2016 estimates and have increased due to underlying support cost increases.

    d. Other related costs such as travel, consultancy, and training have been forecast based on a combination of historic trends and expected activity.

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Major hazard facilities cost assumptions 2021

83. The cost assumptions for the next five-year cycle are outlined below:

Table 13: Number of major hazard facilities

Estimated Facilities	2016	2021	2022/23 onwards (average over five years)
Lower Tier	60	75	69
Upper Tier	80	55	55
Total	**140**	**130**	**124**

84. The forecast number of facilities for 2022/23 onwards is based on the number of facilities in 2021 and assumes a small reduction to Lower Tier Type 1 facilities over the next five years. The small reduction reflects the actual known reduction in the industry and the expected reduction based on the activity over the last five years.

85. The original number of facilities estimated in 2016 was higher than the actual number of facilities over the last five years, the highest number of facilities in any given year was 133 in total (2018/19 and 2019/20). The actual numbers have informed the modelling of the number of facilities over the next five years.

FTE assumptions (number of employees and salaries)

86. The forecast FTE headcount number of employees has remained the same (2016 vs. 2022/23 ongoing), however the MHF team was not fully staffed for some of the first five-year period, which is reflected in the surpluses generated.

87. The forecast salaries are based on the current average salaries, with a ~3% increase on average applied per year that covers inflationary/remuneration framework estimated salary increases.

88. The team mix has changed from 15 Specialist Inspectors to 12 Specialist Inspectors, 2 Specialist Investigators and a Senior Business Analyst. The remaining roles stay the same.

    a. Specialist Investigators: As the regime has progressed, dedicated investigators have been introduced to follow up on high potential incidents.

    b. Senior business analyst: the operation of the regime has shown that having a resource with the ability to extract and summarise data supports a more efficient utilisation of highly skilled resources.

Internal charges / recoveries

89. The original overhead methodology and assumptions in 2016 have not changed.[2] The attributable overheads are based on the same proportionate allocation of ICT and property costs from 2016.

    a. The overheads in the original 2016 assumptions estimated overheads to be ~$0.480m in 22/23.

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b. Overheads for 22/23 and ongoing have been forecast to be ~$0.650m per year, reflecting underlying support cost increases.

90. Overheads are attributed to funding streams by including them in charge-out rates for time spent on each type of activity.

Other costs

91. Other related costs (such as travel, consultancy, training etc) have been forecast based on a combination of historic trends and expected activity.

92. The forecast for overall costs is increased from the average historic spend due to the full establishment of FTE staff.

93. Historic travel spend has been lower than expected due to the disruption of COVID, and an easing of these restrictions in future years has been factored in.

94. In the next five-year cycle, travel is expected to be higher than both the 2016 forecast and the actuals spent in the last five years. This is two-fold, a combination of the increase in the cost to travel, and the expected amount of appropriate trips to support the activity.

Site inspections

95. The forecast number of site inspection events is based on the MHF team's intent for each Specialist Inspector to lead seven site inspections per year (12 inspectors x 7 inspections = 84), which is close to the historic median site inspection events (86). Each Upper Tier site has been allocated at least one site inspection per year. The remaining site inspections have been distributed evenly amongst the lower tier facilities.

96. The forecast days per site inspection is as follows:

    a. All lower Tiers = 14 days per site inspection

    b. Upper Tier -Type 1 and Type 2 = ~ 17 days

    c. Upper Tier -Type 3 = 21.5 days

MHF notifiable incidents

97. The forecast number of notifiable incidents is based on historical data from the last five years (slightly smoothed), but with an increase to Lower Tier Type 1 notifiable incidents, as operators are becoming more mature and aware of the MHF notifiable incident requirements.

98. The forecast days spent responding to notifiable incidents matches the historical time sheet data at two days.

99. The number of notifiable incidents is different between the designation categories, as the forecast for volume of notifiable incidents per designation category is based on past results from the last five years.

New safety cases

100. The forecast number of new safety cases is assumed to be 1 per Type within the five-year period. The actual numbers over the last five years have informed the modelling of the number of facilities over the next five years.

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101. The forecast number of person days for a new safety case event is the mid-point of the historical time sheet data, which equates to 25 days.

Revised safety case

102. The forecast number of revised safety case events is based on the forecast number of Upper Tier facilities, as each existing Upper Tier facility will need to submit a revised safety case in the next five years.

103. The forecast number of days for a new safety case event matches the historical time sheet data of 20 days. (There have only been two revised safety cases assessed to date and both took 173 hours to assess, which rounds down to 20 days).

Costing the activity to fully recover the expected future costs

104. Based on these activities and assumptions, the expected future costs for WorkSafe's MHF team over the next five years are:

   a. MHF regulatory activity recovered by the MHF levy will cost Confidential advice to

   b. MHF safety case assessment activity recovered by the MHF fee will cost Confidential advice

   c. Regulatory activity recovered by the Health and Safety at Work levy will cost Confidential advice

105. Based on these expected future costs:

   a. The **levy rates** are currently set too low for all operators and will not fully recover the costs of the activity over time but will under-collect.

   b. The **new** safety case assessment fee is currently set too high for all operators, while the **revised** safety case assessment fee is set too low for Type 1 and 2 operators and too high for Type 3 operators.

Scope for considering options

106. The options considered by MBIE and WorkSafe in the review of MHF fees and levies is limited to the rates only, including maintaining the current rates (status quo).

107. The following aspects are out of scope of this review of fees and levies:

   a. Making any changes to the existing underpinning cost recovery mechanism or components of the MHF regime. MBIE and WorkSafe consider that:

      i. the wider policy settings and circumstances have been relatively stable, and

      ii. it is still appropriate to directly recover the costs of MHF regulatory activity from operators of MHF.

   b. reviewing the criteria for facility Types and Tiers, which involves the classifications of hazardous substances. MBIE and WorkSafe consider that this is too broad and not within scope of this review. Review of the classifications of hazardous substances is scheduled in MBIE's upcoming review of the *Health and Safety at Work (Hazardous Substances) Regulations 2017*.

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108. Therefore, MBIE and WorkSafe did not consider any non-regulatory options, for example, the removal or replacement of the MHF fee and levy scheme by other funding mechanisms.

109. MBIE and WorkSafe have discounted the following options aimed at keeping costs at the 2016 level (in order to keep the fees and levies at their current (2016) levels). These options would not meet the policy intent of the Regulations, as they would not ensure sufficient regulator activity funded at a level and quality to monitor and enforce the Regulations, provide guidance, advice and information to operators of MHF, and support safety in the MHF sector.

    a. **Efficiency or productivity improvements:** Beyond the efficiencies already made by WorkSafe as outlined in paragraph 1 (including lower than anticipated vehicle operating costs and depreciation; lower than expected contracting of external expertise, less travel due to more desk based assessments), it is not possible to keep the costs constrained to the 2016 level through further efficiencies or productivity improvements without WorkSafe being able to achieve the expected service delivery standard (eg two-yearly inspections for Lower Tier facilities, and annual inspections for Upper Tier facilities).

    b. **Reducing the level of service delivery:** operators still require the same amount of oversight and support from WorkSafe as when the regime came into effect in 2016, because:

        i. Some operators are considered low maturity in terms of process safety, as evidenced by WorkSafe's inspections, or other indicators such as incident notifications.

        ii. Regulatory failure or incidents occurring at MHF is a high consequence event that can cause multiple fatalities and widespread injury to workers, and the community, and cause harm to the wider New Zealand economy and the environment.

        iii. The regime, established in 2016, is still considered a relatively new regime, and regulatory oversight activity should remain at current levels, not decreased.

110. The following fee and levy options have also been discounted:

    a. **Setting a flat levy rate for all payers** because this option would exacerbate rather than address the problem of cross subsidisation amongst levy payers.

    b. **A flat fee with additional input-based charges for complex or time-consuming cases**:

        i. This option would comprise a flat fee for safety case assessment, with additional charges based on the number of extra hours it takes to assess the safety case over and above a certain time

        ii. This option was discounted because it does not provide certainty for the fee payers and is more complex than a flat fee only, which would increase the transaction costs for both the payers and for WorkSafe beyond the benefits that it would bring.

    c. **A discounted fee for new safety cases** because returning the surplus via a discounted fee for new safety cases is not equitable to existing operators. New Upper Tier MHF have not contributed to the current surplus so should not receive a discounted rate.

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The options

111. MBIE analysed three options for the MHF fee and levy rates, outlined below:

a. **Option 1: Maintaining the current rates (status quo)**

Keeping the fees and levies at the current rates (as set in 2016).

b. **Option 2: Return surplus then move to full cost recovery rates**

Change the fee and levy rates to return the surplus, then move to rates that will fully recover the costs of the regulatory activity.

c. **Option 3: Full cost recovery rates**

Change the fee and levy rates to immediately fully recover the costs of the regulatory activity, without returning the surpluses.

Options for levy rates

112. The options for MHF levy rates are shown in Table 14.

Table 14: The options for MHF levy rates

		OPTION 1: Maintaining the current levy rates	**OPTION 2:** Return surplus then move to full cost recovery rates		**OPTION 3:** Full cost recovery rates
	Facility Type	**Current annual levy ($)**	**Levy rate with a discount in years 1-2**	**Full cost recovery from year 3**	**Full cost recovery from year 1**
Lower Tier	Type 1	12,500	$7,800	$14,600	$14,600
	Type 2	15,000	$9,000	$17,600	$17,600
	Type 3	18,000	$10,200	$19,900	$19,900
Upper Tier	Type 1	23,000	$14,700	$28,800	$28,800
	Type 2	28,000	$17,900	$35,000	$35,000
	Type 3	34,000	$20,400	$39,900	$39,900

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Option 1: Maintaining the current rates (status quo)

113. The *Option 1* column in Table 14 shows the current levy rates.

114. This option would keep the levies at the current rates, therefore levy revenue would also remain at current levels.

115. Under this option, over the next five-year period:

    a. The levy revenue will not match WorkSafe's levy expenditure (ie levy revenue is less than levy expenditure) due to an increase in WorkSafe's expected regulatory activity costs.

    b. The current surplus is not returned to operators in the form of a discounted levy. Rather the surplus in the levy memorandum account is gradually used over time to meet the expected increase in regulator activity and costs.

    c. The levy memorandum account would move gradually closer to zero from 2022 to 2026, and then go into deficit in 2027.

116. This option does not address cross subsidisation amongst levy payers because the current levy rates do not reflect the costs of each Type of facility. All facilities are underpaying for services they receive from WorkSafe, for example:

    a. The levy remains too low for Lower Tier Type 1 facilities that pay a levy of $12,500, while the service cost for this facility Tier and Type is $14,600. This leads to these operators each underpaying $2,100 for services it receives from WorkSafe, and a deficit.

    b. The levy also remains too low for Upper Tier Type 2 facilities that pay a levy of $28,000, while the service cost for this facility Tier and Type is $35,000. This leads to these operators each underpaying $7,000 for services it receives from WorkSafe, and a deficit.

Option 2: Return surplus then move to full cost recovery rates

117. During public consultation, we asked operators and interested stakeholders to consider the timeframe for returning the levy surplus to payers through a discounted rate under *Option 2*.

118. We consulted on a wide range of timing options for returning the surplus to levy payers, specifically:

    a. **Option 2a** – Provide a very large discount in the levy rate in year 1, full cost recovery from year 2

    b. **Option 2b** – Provide a large discount in the levy rate in years 1-2, full cost recovery from year 3

    c. **Option 2c** – Provide a medium discount in the levy rate in years 1-3, full cost recovery from year 4

    d. **Option 2d** – Provide a small discount in the levy rate in years 1-4, full cost recovery from year 5

    e. **Option 2e** – Provide a very small discount in the levy rate in years 1-5, full cost recovery from year 6.

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119. **Annex Two** outlines the discounted levy rate for each timing option under *Option 2*, as set out in the consultation document.

120. Submission analysis found that one submitter indicated support for **Option 2a** – that is, return of levy surplus as fast as possible with a very large discount in year 1 and move to full cost recovery from year 2. However, while returning the levy surplus earlier is fairer, a risk that was raised by another submitter is that if the surplus is returned too aggressively, it may result in further short-term corrections to levy rates being required if costs change.

121. The other two submitters that expressed support for *Option 2* did not specifically comment on the timing options for returning the levy surplus.

122. We considered that **Option 2b** – levy rate with a large discount in years 1-2, full cost recovery from year 3 is the sub-option that best meets the criteria for cost recovery and balances submitters' feedback. **Therefore, Option 2b is the selected *Option 2* shown in Table 14.**

123. *Option 2* returns the accumulated levy surpluses to payers through a discounted rate in years 1 and 2. After the surplus has been expended, the levy rates move to full cost recovery from year 3.

124. This option adjusts the levy rates by Type to align with WorkSafe's expected regulatory activity costs and minimises the cross subsidisation across levy payers.

125. Once the levies are set to achieve full cost recovery from year 3, there will be an increase in the levy rate for all operators from the current rates.

Option 3: Full cost recovery rates

126. The *Option 3* column in Table 14 shows the full cost recovery levy rates.

127. This option sets the levy rates at the level that will fully recover WorkSafe's expected regulatory activity costs from year 1 (2023/24), without returning the surplus to levy payers in the form of discounted rates.

128. This option adjusts the levy rates by Type to align with expected costs and minimises the cross subsidisation across levy payers.

129. There will be an increase in the levy rate for all operators from the current rates.

130. The surplus in the levy memorandum account will stay fairly stable, unless expenditure is substantially greater or less than what is expected under the cost modelling.

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Options for fee rates

131. The options for MHF fee rates are shown in Table 15.

Table 15: The options for MHF fee rates

	OPTION 1: Maintaining the current fee rates				**OPTION 2:** Return surplus then move to full cost recovery rates from year 6			
	New safety case assessment		**Revised safety case assessment**		**Discounted fee to return surplus over next five-year cycle**	**Full cost recovery fee** **OPTION 3**: Full cost recovery rates		
Upper Tier Facility Types	**Fee ($)**	**Reduced fee for additional facility ($)**	**Fee ($)**	**Reduced fee for additional facility ($)** Fee reduced by 20%	**Revised safety case assessment ($)**	**New safety case assessment ($)**	**Revised safety case assessment ($)**	**Revised safety case assessment for additional facility ($)** Fee reduced by 20%
Type 1	45,000	36,000	20,000	16,000	$8,000	$31,000	$28,100	$22,500
Type 2	56,000	44,800	25,000	20,000	$8,000	$31,000	$28,100	$22,500
Type 3	67,000	54,000	30,000	24,000	$8,000	$31,000	$28,100	$22,500

Note: Option 3 is a subset of Option 2. Option 2 returns the surplus through a discounted fee rate for revised safety cases, while Option 3 does not.

Option 1: Maintaining the current rates (status quo)

132. The *Option 1* column in Table 15 shows the current fee rates.

133. This option would keep the fees at the current rates, therefore fee revenue would also remain at current levels.

134. Under this option, over the next five-year period:

    a. For **new** safety cases, all operators will be charged too much, contributing to a continued over-collection over time from all operators.

    b. For **revised** safety cases, Type 1 and 2 operators will be charged too little while Type 3 operators will be charged too much, based on the expected future costs for each activity.

    c. Operators of multiple sites to continue receiving a 20 per cent reduction in fee, for **new and revised** safety case assessments, of additional sites.

    d. The fee memorandum account balance would slightly increase over the next five-year period from $988,000 in 2021 to $1m in 2027.

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Option 2: Return surplus then move to full cost recovery rates

135. The *Option 2* column in Table 15 shows both discounted fee rates and full cost recovery fee rates for **new** and **revised** safety case assessments.

136. This option returns the accumulated fee surpluses to fee payers through the same discounted fee for all **revised** safety case assessments (including for additional facilities) for the next five-year cycle (2023 to 2027). The surplus is returned to the existing operators who have contributed to the surplus to date. After the next five-year cycle, the revised safety case fee then moves to full cost recovery to recover WorkSafe's expected regulatory activity costs.

137. This option aligns the **revised** safety case fees across Types to match WorkSafe's actual and expected costs to minimise the cross subsidisation amongst fee payers.

138. WorkSafe has found that the differentiation in fees between facility Types originally set in 2016, to account for differences in site complexity, does not reflect actual practice. Therefore, this option sets the same fee across all Types. The proposed alignment across facility Types results in a higher revised safety case fee for Type 1 and 2 operators, and a lower fee for Type 3 operators, than the current rates.

139. The fee for a **new** safety case is adjusted to move to full cost recovery from year 1 (2023), resulting in a lower rate than currently charged for all Types of operators. As new MHF have not contributed to the current surplus, they will not receive a discounted rate over the next five years as is being applied to the revised safety case fees.

140. To better reflect actual costs, the 20 per cent reduction in the fee for additional sites is retained for **revised** safety cases but removed for **new** safety case assessments, which already are substantially reduced from current rates.

Option 3: Full cost recovery rates

141. The *Option 3* column in Table 15 shows the full cost recovery for **new** and **revised** safety case assessments.

142. This option sets the fees for both **new** and **revised** safety case assessments at the level that will fully recover WorkSafe's expected regulatory activity costs from year 1 (2023), without returning the accumulated fee surplus to existing operators.

143. This option adjusts the fees by Type (setting the same fee across all Types) to align with expected costs to minimise the cross subsidisation across fee payers, specifically:

    a. **New** safety case fees will drop for all operators of new MHF to address the over-collection of **new** safety case fees

    b. **Revised** safety case fees will be higher for Type 1 and 2 operators, and lower for Type 3 operators to match WorkSafe's actual and expected costs.

    c. The 20 per cent reduction in fees for **additional sites** is retained for **revised** safety cases but removed for **new** safety case assessments, which already are substantially reduced from current rates.

144. The surplus in the fee memorandum account will stay relatively stable, unless expenditure is greater or less than what is expected under the cost modelling.

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Options analysis

145. Table 16a compares the options for levy rates against the cost recovery objectives discussed earlier.

Table 16a: Assessment of levy options against cost recovery objectives

Description of option	**Objective / assessment criteria**	**Fairness.** Levy rates should fairly apply the cost of the service provided to the appropriate operators, and not allow for surpluses or deficits to build up.	**Justifiability.** Levy rates should reasonably relate to the service charged for and not cross subsidise amongst levy payers.	**Efficiency.** Levy rates should match the cost of providing the service to the operator, and at the desired level of quality .
Option 1: Maintaining the current levy rates while WorkSafe's costs increase		**0** • The levy rates have not fairly applied the cost of the service to the appropriate operators, as there is a current levy surplus of $2.544 million. Collectively, operators have overpaid over the last five years relative to the cost of the service. • Continuing to apply the current levy rates will mean the levy surplus of $2.544 million will be very gradually returned over time to the operators, as future annual costs will be greater than annual revenue. • This will lead to a deficit of $211,000 in 2027, which will then increase over time as operators will be underpaying and costs will continue to exceed revenue.	**0** • The levy rates have cross subsidised amongst levy payers, as Lower Tier Type 1 and 3 operators have been charged too little relative to other types of operators. • This cross subsidisation will continue over the next five years of the regime, but will change in nature as the expected WorkSafe regulatory activity and therefore future costs change by Tier and Type. • In particular Upper Tier facilities will shift to being undercharged for the services they receive from WorkSafe under the current levy rate structure, paying between $5,800 and $7,000 too little in levy each year.	**0** • The levy rates will not match the costs to WorkSafe of providing the services to the desired quality, but will be too low for all facility Tiers and Types. • While most facility Tiers and Types have been overpaying over the first five years of the regime, all facilities will be underpaying for services provided by WorkSafe over the next five years given the expected increase in future costs. The annual shortfall per facility ranges from approximately $1,900 to $7,000. • WorkSafe would need to reduce the quality or level of its regulatory activity from 2027 so that the costs match the expected shortfall in revenue (given that this activity should be cost recovered directly from the operators and not from other funding sources).

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Option 2: Return surplus then move to full cost recovery Change the levy rates to return the surplus, then move to full cost recovery rates.	++ • Levy rates will fairly apply the actual cost of the MHF services to the appropriate operators, where the services provided are fully cost recovered (once the surplus is returned after year 2). • After the current levy surplus of $2.544 million is returned to operators via a discounted rate in years 1 and 2, the levy memo account balance should track close to zero over time, as the services provided are fully cost recovered.	++ • Cross subsidisation will be minimised amongst levy payers as each operator will be charged the expected cost of the service that they receive from WorkSafe (once the levy surplus has been returned after year 2).	+ • Levy rates will match the costs to WorkSafe of providing services to the desired quality, with no shortfall per facility. • WorkSafe will be able to carry out the required regulatory activity at the desired level of quality. This option rates slightly higher than Option 1 where WorkSafe would need to reduce activity but only from 2027.
Option 3: Full cost recovery Change the levy rates to full cost recovery rates, without returning the surpluses.	+ • While the levy rates will fairly apply the actual cost of the MHF services provided to the appropriate operators for the future, the current levy surplus of $2.544 million is not returned to operators but retained, which is inequitable to operators. • The levy memo account balance will continue to run in surplus of $1 million by 2027.	++ • Cross subsidisation will be minimised amongst levy payers as each operator will be charged the expected cost of the service that they receive from WorkSafe.	+ • Levy rates will match the costs to WorkSafe of providing services to the desired quality, with no shortfall per facility. • WorkSafe will be able to carry out the required regulatory activity at the desired level of quality. This option rates slightly higher than Option 1 where WorkSafe would need to reduce activity but only from 2027.

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146. Table 16b compares the options for fee rates against the cost recovery objectives discussed earlier.

Table 16b: Assessment of fee options against cost recovery objectives

Description of option	**Objective / assessment criteria**	**Fairness.** Fee rates should fairly apply the cost of the service to the appropriate operators, and not allow for surpluses or deficits to build up.	**Justifiability**. Fee rates should reasonably relate to the service charged for and not cross subsidise amongst fee payers.	**Efficiency.** Fee rates should match the costs of providing the service, and at the desired level of quality .
Option 1: Maintaining the current fee rates while WorkSafe's costs increase		**0** • Fee rates have not fairly applied the expected cost of the service to the appropriate operators, as there is a current fee surplus of $988,000. Collectively, Upper Tier operators have overpaid over the last five years relative to the cost of the service. • Continuing to apply the current fees will mean the fee memo account surplus will continue, at $1 million by 2027, so it is not returned to operators.	**0** • The fee rates have cross subsidised amongst fee payers, as all Upper Tier facilities are overpaying for *new* safety cases, and Upper Tier Type 1 and Type 2 facilities are underpaying for *revised* safety cases. • This cross subsidisation will continue over the next five years of the regime, as *revised* safety case fees are lower than WorkSafe's expected costs for all but Type 3 facilities, while all *new* safety case fees are significantly higher than WorkSafe's expected costs, by up to $36,000 too much for Type 3 facilities. Almost all safety case assessments over the next five years will be for revised safety cases.	**0** • Fee rates have not matched the costs for assessing safety cases over the last five years, with the fee having been set too high compared to the cost of each safety case assessment. • Continuing to apply to the current fees will not match the costs of providing each service over the next five years, as the fees are set too high for new safety cases, and too low for revised safety cases. Almost all safety case assessments over the next five years will be for revised safety cases.
Option 2: Return surplus then move to full cost recovery Change the fee rates to		**++** • Fee rates will fairly apply the expected cost of the service to the appropriate operators, where services provided are	**++** • Cross subsidisation will be minimised amongst fee payers as each operator will be charged the expected cost of the	**+** • Fee rates will match the cost of assessing safety cases, providing for the desired level of quality of service by WorkSafe.

return the surplus, then move to full cost recovery rates.	cost recovered (once the surplus is returned after the next five-year cycle), and not over or under-recovered. • Fee surplus is returned to operators via a discounted rate for **revised safety cases** over the next five-year cycle. Fee for **new safety cases** move to full cost recovery rates (as new operators should not benefit from previous surpluses). • The fee memo account balance should track towards zero as the fee surplus is returned.	service that they receive from WorkSafe (once the surplus is returned after the next five-year cycle).	
Option 3: Full cost recovery Change the fee rates to full cost recovery rates, without returning the surpluses.	+ • Fee rates will fairly apply the expected cost of the service to the appropriate operators, where the services provided are fully cost recovered but not over-recovered. • Both **revised** safety cases and **new** safety cases move to full cost recovery rates. • Fee surplus is not returned to the operators who have overpaid and the fee memo account surplus will continue, at $1 million by 2027.	++ • Cross subsidisation will be minimised amongst fee payers as each operator will be charged the expected cost of the service that they receive from WorkSafe (once the surplus is returned after the next five-year cycle).	+ • Fee rates will match the cost of assessing safety cases, providing for the desired level of quality of service by WorkSafe.

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147. The preferred options are:

a. For *Levy*: **Option 2: Return surplus then move to full cost recovery**.

b. For *Fee*: **Option 2: Return surplus then move to full cost recovery**.

148. For levy rates as outlined in Table 17, Option 2 returns the levy surplus to levy payers through a discounted rate in years 1 and 2. After the surplus has been used up, the levy rates move to full cost recovery from year 3.

149. We prefer Option 2 as it matches the levy paid by operators to the actual costs of the service they receive, returns the current levy surplus to the appropriate operators, and removes the cross subsidisation amongst levy payers. Retaining the status quo levy rates would also return the levy surplus to operators, albeit at a slower pace, and would not entail an initial drop in levies followed by an increase. However, it would not address the cross subsidisation nor would it match the levy paid by each operator to the actual costs. It would also mean after 4 years that the levy memo account would move into deficit. For these reasons we consider that Option 2 for levies is – on balance – fairer and more justifiable.

Table 17: Option 2: Return surplus then move to full cost recovery: MHF levy rates

		Option 2: Return surplus then move to full cost recovery	
	Facility Type	**Levy rate with a discount in years 1-2**	**Full cost recovery from year 3**
Lower Tier	Type 1	$7,800	$14,600
	Type 2	$9,000	$17,600
	Type 3	$10,200	$19,900
Upper Tier	Type 1	$14,700	$28,800
	Type 2	$17,900	$35,000
	Type 3	$20,400	$39,900

150. For fee rates as outlined in Table 18, Option 2 returns the fee surplus to fee payers through the same discounted fee for all **revised** safety case assessments (including for additional facilities) for the next five-year cycle (2023 to 2027). The surplus is returned to the existing operators who have contributed to the surplus to date. After five years, the revised safety case fee then moves to full cost recovery to recover WorkSafe's expected regulatory activity costs.

151. We prefer Option 2 as it matches the fee paid by operators to the actual costs of the service they receive, returns the current fee surplus to the appropriate operators, and removes the cross subsidisation amongst fee payers. While retaining the status quo fees would still provide sufficient fee revenue overall for WorkSafe to carry out safety case assessments, the status quo would not return the fee surplus to the appropriate payers, nor address the cross subsidisation or match the fee paid by each operator to the actual costs of the safety case assessment. For these reasons we consider that Option 2 for fees is more equitable and justifiable.

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Table 18: Option 2: Return surplus then move to full cost recovery: MHF fee rates

	Option 2: Return surplus then move to full cost recovery from year 6			
	Discounted fee to return surplus over next five-year cycle	**Full cost recovery fee**		
Upper Tier Facility Types	**Revised safety case assessment ($)**	**New safety case assessment ($)**	**Revised safety case assessment ($)**	**Revised safety case assessment for additional facility ($)** Fee reduced by 20%
Type 1	$8,000	$31,000	$28,100	$22,500
Type 2	$8,000	$31,000	$28,100	$22,500
Type 3	$8,000	$31,000	$28,100	$22,500

Impact analysis

Number of operators and businesses affected

152. As outlined in Section One, New Zealand currently has 130 MHF, 75 Lower Tier facilities and 55 Upper Tier facilities, that are run by 62 operators. In general, operators are likely to be large, and to be a part of, or related to, larger global enterprises and company networks.

Impacts on operators as a collective – marginal benefits or cost

153. Tables 19 to 22 below show the marginal benefits (a reduction in rates) or costs (an increase in rates) of **Option 2: Return surplus then move to full cost recovery rates** on operators as a collective, given a change from the current rates (as set in 2016).

154. It is expected that almost all fees from this point on will be for revised safety case assessments, as most of the facilities are now in the system. Only new facilities will pay fees for new safety case assessments.

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155. Table 19 below shows that for levy, there will be an overall combined benefit of $414,600 to the operators over the next five-year cycle. Upper Tier Type 1 and 2 operators have an overall cost over the five-year period because they face larger increases from current rates to full cost recovery rates, compared to the others, while Upper Tier Type 3 benefits the most from the discounted rate in the first two years.

Table 19: Marginal costs or benefits for levy payers: MHF Levy

	Facility Type	Number of Facilities	Current levy rates ($)	Levy rate with a discount in years 1-2 ($)	Marginal benefit or (cost) per facility ($)	Full cost recovery rate in years 3-5 ($)	Marginal benefit or (cost) per facility ($)	Overall benefit or (cost) for all facilities over five-year period ($)
Lower Tier	Type 1	41	12,500	7,800	4,700	14,600	(2,100)	127,100
	Type 2	28	15,000	9,000	6,000	17,600	(2,600)	117,600
	Type 3	6	18,000	10,200	7,800	19,900	(1,900)	59,400
Upper Tier	Type 1	31	23,000	14,700	8,300	28,800	(5,800)	(24,800)
	Type 2	9	28,000	17,900	10,100	35,000	(7,000)	(7,200)
	Type 3	15	34,000	20,400	13,600	39,900	(5,900)	142,500
Total		**130**						**414,600**

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156. Table 20 below shows that for revised safety case assessment fees over the next five-year cycle, there is an overall combined benefit of $608,000 to operators with an Upper Tier facility, and an overall combined benefit of $172,000 to the operators with additional facilities of the same Type as their first facility. This is because all Types have overpaid, and all are benefiting from the return of surplus.

Table 20: Marginal costs or benefits for fee payers over the next five-year cycle: Revised safety case assessments

				Current revised safety case fees		Discounted fee to return surplus over next five-year cycle	Reduced revised safety case fee for additional sites	Marginal benefit or (cost) for all facilities over five-year cycle	
Facility Type		**Number of first facilities**	**Number of additional facilities**	**Fee ($)**	**Reduced fee for additional facility ($)**	**Fee ($)**	**Reduced fee for additional facility ($)**	**One facility ($)**	**Additional facilities ($)**
Upper Tier	Type 1	21	10	20,000	16,000	8,000	8,000	252,000	80,000
	Type 2	8	1	25,000	20,000	8,000	8,000	136,000	12,000
	Type 3	10	5	30,000	24,000	8,000	8,000	220,000	80,000
Total		**39**	**16**					**608,000**	**172,000**

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157. Table 21 below shows that for **revised** safety case assessment fees over the **second** five-year cycle (ie 2028 to 2032):

a. Although there is an overall combined cost of $175,900 to operators with an Upper Tier facility, Upper Tier Type 3 operators will receive a combined benefit of $19,000, as the fee paid will drop for Type 3 operators to reflect actual costs, while it increases for the other operators.

b. Although there is an overall combined cost of $60,000 to the operators with additional facilities of the same Type, Upper Tier Type 3 operators will receive a combined benefit of $7,500, again because the fee drops for Type 3 to reflect actual costs, while it increases for the other operators.

Table 21: Marginal costs or benefits for fee payers over the second five-year cycle: Revised safety case assessments

				Current revised safety case fees		**Full cost recovery rate: revised safety case**		**Marginal benefit or (cost) for all facilities over five-year cycle**	
Facility Type		**Number of first facilities**	**Number of additional facilities**	**Fee ($)**	**Reduced fee for additional facility ($)**	**Fee ($)**	**Fee for additional facility ($)** 20% reduction for additional facilities	**One facility ($)**	**Additional facilities ($)**
Upper Tier	Type 1	21	10	20,000	16,000	28,100	22,500	(170,100)	(65,000)
	Type 2	8	1	25,000	20,000	28,100	22,500	(24,800)	(2,500)
	Type 3	10	5	30,000	24,000	28,100	22,500	19,000	7,500
Total		**39**	**16**					**(175,900)**	**(60,000)**

158. Table 22 below shows that for **new** safety case assessment fees over the **next** five-year cycle:

a. There is an overall combined benefit of $75,000 to operators with an Upper Tier facility, as the fees drop for all operators to reflect costs.

b. There are no benefits or costs to operators of additional Upper Tier facilities**Error! Bookmark not defined.**.

Table 22: Marginal costs or benefits for fee payers: New safety case assessments

Facility Type		Number of new facilities[8]	Current new safety case fees		Full cost recovery rate: new safety case		Marginal benefit or (cost) per facility over five-year cycle	
			Fee ($)	**Reduced fee for additional facility ($)**	**Fee ($)**	**Fee for additional facility ($)** 20% reduction in fee removed for additional facilities	**One facility ($)**	**Additional facilities[8] ($)**
Upper Tier	Type 1	1	45,000	36,000	$31,000	$31,000	14,000	-
	Type 2	1	56,000	44,800	$31,000	$31,000	25,000	-
	Type 3	1	67,000	54,000	$31,000	$31,000	36,000	-
Total		**3**					**75,000**	**-**

[8] The number of new Upper Tier facilities in the next five-year cycle is forecast to be one facility of each Type. The (three) facilities are assumed to be new operators, and not existing operators, which means there are no additional facilities.

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Impact on individual operators

159. Table 23 shows the impact of **Option 2: Return surplus then move to full cost recovery rates** on operators over the first five-year cycle through different scenarios. The scenarios are:

   a. Large operator – multiple Lower Tier facilities and one Upper Tier facility (scenario one).

   b. Large operator - multiple Upper Tier facilities (scenario two).

   c. Medium operator - three Upper Tier facilities and one Lower Tier facility (scenario three).

   d. Small operator - one Lower Tier facility (scenario four).

Table 23: Impact of Option 2: Return surplus then move to full cost recovery rates on operators through different scenarios over the first five-year cycle

Scenario	Size of operator	Number and Type of MHF	Total benefit or (cost)
1	**Large** – operates multiple Lower Tier facilities	7 x Lower Tier Type 1 1 x Upper Tier Type 1	**Total benefit $32,900** Due to $20,900 saving in levy and $12,000 saving in fees
2	**Large** – operates multiple Upper Tier facilities	3 x Upper Tier Type 1 1 x Upper Tier Type 2	**Total benefit $41,800**. Due to $3,200 cost in levy, $29,000 saving in revised safety case fees for first facility (for each Type), and $16,000 saving in revised safety case fees for additional facilities.
3	**Medium**	1 x Lower Tier Type 3 1 x Upper Tier Type 1 2 x Upper Tier Type 3	**Total benefit $78,100** Due to $28,100 saving in levy, $34,000 saving in revised safety case fees for first facility (for each Type), and $16,000 saving in revised safety case fees for additional facilities.
4	**Small**	1 x Lower Tier Type 2	**Total benefit $4,200** Due to $4,200 saving in levy. As the facility is a Lower Tier facility, the operator does not pay a safety case fee.

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Impact on WorkSafe

160. Under **Option 1: Maintaining the current rates** for both fee and levy, there would be little immediate impact on WorkSafe in the short term but as the levy surplus is used up over time, WorkSafe would eventually begin to operate in deficit for the levies. This is unsustainable and is contrary to policy decisions that WorkSafe's activity for oversight of MHF should be cost recovered from targeted fees and levies. For the fees, WorkSafe would continue to operate in surplus which is also unsustainable as Crown Entities are expected to not accumulate surpluses beyond a certain threshold.

161. Under **Option 2: Return surplus then move to full cost recovery for** both fee and levy, WorkSafe would need to make invoicing changes with new fee and levy rates. This option would be slightly more difficult to administer than Option 3 in that it would involve two sets of changes to rates for fees and levies ie discounted rates until the surplus is used up, then move to cost recovery rates

162. Under **Option 3: Full cost recovery** for both fee and levy, WorkSafe would need to make one invoicing change only. WorkSafe would continue to operate in surplus which is unsustainable as Crown Entities are expected to not accumulate surpluses beyond a certain threshold.

Other impacts

163. There will be marginal benefits to society where the options better support the safety outcomes sought by the Regulations, in particular, managing the risk of catastrophic failure which can affect the public. We do not anticipate significant differences in these impacts on different sectors of the population, other than workers and their families, and communities living or working close to facilities.

Consultation

164. MBIE and WorkSafe carried out public consultation with operators, individuals and businesses, consultants and technical specialists in the major hazards sector over six weeks from January to March 2022. This involved formal consultation on a consultation document that sought feedback on options for MHF levy and fee rates so that they fully recover WorkSafe's expected regulatory activity costs and minimise cross-subsidisation among levy and fee payers.

165. Five submissions were received. Submitters broadly agreed with:

    a. the problem definition

    b. that the correct cost recovery objectives were identified

    c. that the options proposed for fee and levy rates were the correct options to consult on.

166. Submitters also broadly supported **Option 2: Return surplus then move to full cost recovery** for both fee and levy:

    a. Three out of five submitters viewed **Option 2** as the option that best addresses the problem definition for levy rates. More detail on submitters' view on the appropriate timeframe for Option 2 of returning levy surplus to payers through a discounted rate was outlined in earlier paragraphs 117 and 121.

    b. Four out of five submitters viewed **Option 2** as the option that best addresses the problem definition for fee rates.

167. We also asked submitters during consultation about any likely behavioural changes that these options might influence, for example are any of the changes proposed substantial enough that they might:

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- Induce operators to change the amount of hazardous substance that they hold, in order to drop below the thresholds for either of the Tiers, or change the processes they use so that their facility changes to a different Type.
- Induce operators to notify WorkSafe (or conversely, avoid notifying WorkSafe) about a change in Tier or Type.
- Be a potential barrier to operators setting up a new major hazard facility.
- Have any potential impact on safety outcomes for major hazard facilities.

168. Four out of five submitters considered that the proposed changes to fee and levy rates will have very little, or no impact, on their businesses. Submitters said the only substantial impact on their businesses is being aware of the changes to levy and fee rates for budgeting purposes and to have certainty for the next five years. One submitter noted that while the proposed changes would impact their operational costs, the increased costs would be passed onto the customer.

169. We anticipated a small number of submissions due to the relatively discrete nature of the options consulted on (ie reviewing fee and levy rates only), and the size of the major hazards industry. We believe the very low number of submissions could be explained by:

    a. **Broad comfort with the direction of changes to MHF levy and fee rates**. During the public consultation period, MBIE and WorkSafe hosted a webinar to present options for the MHF fee and levy rates. As there were over 50 operators in attendance and good engagement with industry, we believe that most operators are comfortable with the proposed changes to MHF levy and fee rates.

    b. **Changes to MHF levy and fee rates do not have a significant impact on operators and their businesses**. Submitters considered that the proposed changes to fee and levy rates will have very little, or no impact, on their businesses, with the only substantial impact being aware of the changes to levy and fee rates for budgeting purposes and to have certainty for the next five years.

Conclusion and recommendations

170. In conclusion, we recommend:

    a. For *Levy*: **Option 2: Return surplus then move to full cost recovery**.

    b. For *Fee*: **Option 2: Return surplus then move to full cost recovery**.

171. For levy rates, Option 2 returns the levy surplus to levy payers through a discounted rate in years 1 and 2. After the surplus has been returned, the levy rates move to full cost recovery from year 3.

172. We recommend Option 2 as it matches the levy paid by operators to the actual costs of the service they receive, returns the current levy surplus to the appropriate operators, and removes the cross subsidisation amongst levy payers. While retaining the status quo levy rates would also return the levy surplus to operators, albeit at a slower pace, it would not address the cross subsidisation nor would it match the levy paid by each operator to the actual costs. It would also mean after 4 years that the levy memo account would move into deficit. For these reasons we consider that Option 2 for levies is – on balance –fairer and more justifiable.

173. For fee rates, Option 2 returns the fee surplus to fee payers through the same discounted fee for all **revised** safety case assessments (including for additional facilities) for the next five-year cycle (2023 to 2027). The surplus is returned to the existing operators who have contributed to the surplus to date. After five years, the

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revised safety case fee then moves to full cost recovery to recover WorkSafe's expected regulatory activity costs.

174. We recommend Option 2 as it matches the fee paid by operators to the actual costs of the service they receive, returns the current fee surplus to the appropriate operators, and removes the cross subsidisation amongst fee payers. While retaining the status quo fees would still provide sufficient fee revenue overall for WorkSafe to carry out safety case assessments, the status quo would not return the fee surplus to the appropriate payers, nor address the cross subsidisation or match the fee paid by each operator to the actual costs of the safety case assessment. For these reasons we consider that Option 2 for fees is more equitable and justifiable.

Section 3: Delivering the option

Implementation plan

175. The recommended option for MHF fee and levy rates will require changes to the *Health and Safety at Work (Major Hazard Facilities) Regulations 2016.*

176. Once policy decisions have been made, MBIE and WorkSafe will communicate the outcome to operators, industry and interested stakeholders prior to any changes coming into effect to give them time for any necessary changes.

177. We anticipate that any amendments to the Regulations to change fee and levy rates would happen by early [Q1] 2023. WorkSafe would then incorporate any changes into its invoicing of levy and fee payers from when the amendments take effect (usually 28 days after the amendments are made).

178. Actual collection of fees and levies will depend on when services are provided:

    a. For current levy payers, the new levies would be charged in the following invoicing round of 1 July 2023, with invoices due by 1 August 2023.

    b. For new facilities that enter the scheme after the amendments take effect, the new levy would be charged from their first invoice when they enter the scheme.

    c. For both new and revised safety cases submitted after the amendments take effect, the new fees would be charged when the services are provided and invoiced by WorkSafe.

179. WorkSafe does not anticipate any implementation difficulties in returning of levy surplus over years 1-2, or in returning of fee surplus over the next five-year cycle.

180. A possible risk is that the changes to fee and levy rates could leave operators with levy/fee increases that are difficult to manage. To mitigate this risk, as noted in paragraph 158, MBIE and WorkSafe will communicate the changes to fee and levy rates once policy decisions are made. Stakeholders noted during public consultation that they were unconcerned about the proposed increases to fees and levies, and that the changes will have very little, or no impact, on their businesses. Stakeholders did want to be told of the changes in advance for business planning purposes.

Monitoring and evaluation

181. MBIE has ongoing regulatory stewardship obligations and will support WorkSafe to monitor the implementation of the new MHF fee and levy rates. This will include working with the WorkSafe to monitor:

    a. operator numbers

    b. volumes of new and revised safety case assessments

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c. the impact on WorkSafe's resourcing and whether there has been any significant over or under recovery.

182. WorkSafe's Annual Report, and WorkSafe's Petroleum, Geothermal and Major Hazard Facilities Annual Report includes its outputs and performance indicators for the Regulations.

183. WorkSafe's Annual Report reports:

a. the number of reviewed and accepted safety cases for MHF

b. the balances of the MHF levy and fee memorandum accounts

c. its progress against one impact measure – '*The number of high hazard notifiable events that are high potential incidents'* as reflected in WorkSafe's Statement of Intent 2021/22 – 2024/25[9]. Note that this is a new measure, and WorkSafe is currently working to embed reporting and data collection practices so that a baseline is established during 2021/22.

184. WorkSafe's Petroleum, Geothermal and Major Hazard Facilities Annual Report reports the number of notifiable incidents occurring at MHF that requires intervention, and its learnings from these notifiable incidents.

Review

185. There is no ongoing legislative requirement for the review frequency of this scheme.

186. To ensure that the scheme is adequately resourced and operating efficiently, and that over-recovery or under-recovery is minimised, we intend to review the MHF fees and levies in five years' time. This is consistent with the Treasury's Guidelines for Setting Charges in the Public Sector that recommends that cost recovery regimes are reviewed at least every three to five years[10].

187. We consider a five years' timeframe suitable because:

a. the industry is not expected to change significantly, but remain stable, and

b. fees are set five yearly, not annually.

188. MHF levies and fees may be reviewed earlier if MBIE and WorkSafe considers an out-of-cycle review is warranted. Factors that could prompt an earlier review include:

a. memorandum account balances do not move toward zero over time

b. MHF revenue and expenditure not aligning, due to unexpected conditions

c. feedback via the MHF industry and operators, or other avenues, that indicate that fee or levy revenue or expenditure require reviewing.

189. MBIE also has a review of the MHF Regulations on its future policy work programme, with specific timing yet to be determined based on wider regulatory reform priorities. If the full review results in any changes to the requirements in the Regulations, this may require a review of the fees and levies.

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[9] The measure relates to the number of high-potential incidents reported in the extractives, petroleum, geothermal and major hazard facilities (high hazard) industries.

[10] Refer to Treasury's Guidelines for Setting Charges in the Public Sector https://www.treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf

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Annex One: Scenarios showing impact on operators

Scenario One: Large operator – multiple Lower Tier facilities and one Upper Tier facility

MHF levy:

	Facility Type	Number of Facilities	Current levy rate ($)	Levy rate with a large discount in years 1-2 ($)	Marginal benefit or (cost) per facility from discounted levy rate ($)	Full cost recovery rate in years 3-5 ($)	Marginal benefit or (cost) per facility from full cost recovery ($)	Overall benefit or (cost) for all facilities over five-year period ($)
Lower Tier	Type 1	7	12,500	7,800	4,700	14,600	(2,100)	21,700
Upper Tier	Type 1	1	23,000	14,700	8,300	28,800	(5,800)	(800)
Total		**8**						**20,900**

Revised safety case fee for existing operator:

				Current revised safety case fees		Discounted fee to return surplus over next five-year cycle	Reduced revised safety case fee for additional sites	Marginal benefit or (cost) for all facilities over five-year cycle ($)	
Facility Type		Number of first facilities	Number of additional facilities	Fee ($)	Reduced fee for additional facility ($)	Fee ($)	Reduced fee for additional facility ($)	One facility	Additional facilities
Upper Tier	Type 1	1	0	20,000	16,000	8,000	8,000	12,000	0
Total		**1**	**0**					**12,000**	0

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Scenario Two: Large operator - multiple Upper Tier facilities

MHF levy:

	Facility Type	Number of Facilities	Current levy rate ($)	Levy rate with a large discount in years 1-2 ($)	Marginal benefit or (cost) per facility from discounted levy rate ($)	Full cost recovery rate in years 3-5 ($)	Marginal benefit or (cost) per facility from full cost recovery ($)	Overall benefit or (cost) for all facilities over five-year period ($)
Upper Tier	Type 1	3	23,000	14,700	8,300	28,800	(5,800)	(2,400)
	Type 2	1	28,000	17,900	10,100	35,000	(7,000)	(800)
Total		**4**						**(3,200)**

Revised safety case fee for existing operator:

				Current revised safety case fees		Discounted fee to return surplus over next five-year cycle	Reduced revised safety case fee for additional sites	Marginal benefit or (cost) for all facilities over five-year cycle ($)	
Facility Type		Number of first facilities	Number of additional facilities	Fee ($)	Reduced fee for additional facility ($)	Fee ($)	Reduced fee for additional facility ($)	One facility	Additional facilities
Upper Tier	Type 1	1	2	20,000	16,000	8,000	8,000	12,000	16,000
	Type 2	1	0	25,000	20,000	8,000	8,000	17,000	-
Total		**2**	**2**					**29,000**	**16,000**

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Scenario Three: Medium operator - three Upper Tier facilities and one Lower Tier facility

MHF levy:

	Facility Type	Number of Facilities	Current levy rate ($)	Levy rate with a large discount in years 1-2 ($)	Marginal benefit or (cost) per facility from discounted levy rate ($)	Full cost recovery rate in years 3-5 ($)	Marginal benefit or (cost) per facility from full cost recovery ($)	Overall benefit or (cost) for all facilities over five-year period ($)
Lower Tier	Type 3	1	18,000	10,200	7,800	19,900	(1,900)	9,900
Upper Tier	Type 1	1	23,000	14,700	8,300	28,800	(5,800)	(800)
	Type 3	2	34,000	20,400	13,600	39,900	(5,900)	19,000
Total		**4**						**28,100**

Revised safety case fee for existing operator:

				Current revised safety case fees		Discounted fee to return surplus over next five-year cycle	Reduced revised safety case fee for additional sites	Marginal benefit or (cost) for all facilities over five-year cycle ($)	
Facility Type		**Number of first facilities**	**Number of additional facilities**	**Fee ($)**	**Reduced fee for additional facility ($)**	**Fee ($)**	**Reduced fee for additional facility ($)**	**One facility**	**Additional facilities**
Upper Tier	Type 1	1	0	20,000	16,000	8,000	8,000	12,000	0
	Type 3	1	1	30,000	24,000	8,000	8,000	22,000	16,000
Total		**2**	**1**					**34,000**	**16,000**

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Scenario Four: Small operator - one Lower Tier facility

MHF levy:

	Facility Type	Number of Facilities	Current levy rate ($)	Levy rate with a large discount in years 1-2 ($)	Marginal benefit or (cost) per facility from discounted levy rate ($)	Full cost recovery rate in years 3-5 ($)	Marginal benefit or (cost) per facility from full cost recovery ($)	Overall benefit or (cost) for all facilities over five-year period ($)
Lower Tier	Type 2	1	15,000	9,000	6,000	17,600	(2,600)	4,200
Total		**1**						**4,200**

Safety case fee for existing operator:

Operator does not pay a new or revised safety case fee because it has no Upper Tier facilities.

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Annex Two: Sub-options for returning levy surplus to operator over different durations, then move to cost recovery

The tables below show the sub-options MBIE and WorkSafe consulted on for MHF levy. The recommended option is Option 2b.

Option 2: Return surplus then move to full cost recovery.

Option 2a – levy rate with a very large discount in year 1, full cost recovery from year 2

	Facility Type	Levy rate with a very large discount in year 1	Full cost recovery from year 2
Lower Tier	Type 1	$1,100	**$14,600**
	Type 2	$400	**$17,600**
	Type 3	$400	**$19,900**
Upper Tier	Type 1	$600	**$28,800**
	Type 2	$800	**$35,000**
	Type 3	$900	**$39,900**

Option 2b – levy rate with a large discount in years 1-2, full cost recovery from year 3

	Facility Type	Levy rate with a large discount in years 1-2	Full cost recovery from year 3
Lower Tier	Type 1	$7,800	**$14,600**
	Type 2	$9,000	**$17,600**
	Type 3	$10,200	**$19,900**
Upper Tier	Type 1	$14,700	**$28,800**
	Type 2	$17,900	**$35,000**
	Type 3	$20,400	**$39,900**

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Option 2c – levy rate with a medium discount in years 1-3, full cost recovery from year 4

	Facility Type	Levy rate with a medium discount in years 1-3	Full cost recovery from year 4
Lower Tier	Type 1	$10,000	**$14,600**
	Type 2	$11,900	**$17,600**
	Type 3	$13,400	**$19,900**
Upper Tier	Type 1	$19,470	**$28,800**
	Type 2	$23,600	**$35,000**
	Type 3	$26,900	**$39,900**

Option 2d - levy rate with a small discount in years 1-4, full cost recovery from year 5

	Facility Type	Levy rate with a small discount in years 1-4	Full cost recovery from year 5
Lower Tier	Type 1	$11,100	$14,600
	Type 2	$13,300	$17,600
	Type 3	$15,000	$19,900
Upper Tier	Type 1	$21,800	$28,800
	Type 2	$26,400	$35,000
	Type 3	$30,200	$39,900

Option 2e - levy rate with a very small discount in years 1-5, full cost recovery from year 6

	Facility Type	Levy rate with a very small discount in years 1-5	Full cost recovery from year 6
Lower Tier	Type 1	$11,800	**$14,600**
	Type 2	$14,200	**$17,600**
	Type 3	$16,000	**$19,900**
Upper Tier	Type 1	$23,200	**$28,800**
	Type 2	$28,100	**$35,000**
	Type 3	$32,100	**$39,900**

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