

# Briefing

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*TO THE INCOMING MINISTER  
FOR WORKPLACE RELATIONS  
AND SAFETY*

November 2023

# WORKSAFE KARAKIA

## Whāia te iti kahurangi, ki te tuohu koe, me he maunga tike

Follow your treasured aspirations; if you falter, let it be because of insurmountable difficulties

**Tōia mai e te ao mārama  
te ara whakakotahi  
te ara ka haumarū.  
I a tātou i te mahi  
tiakina mai  
kia hoki hauora ki te kāinga,  
kia kōrero mai  
mō te haumarū o te tangata.  
Haumi e, hui e, tāiki e.**

The world of light brings forth  
a pathway of togetherness  
a pathway that keeps us safe.  
While we are at work  
take care of us  
that we may return home safe and well,  
that we may ensure  
the safety of the people.  
Let it be affirmed, it is so.

## INTRODUCTION

On behalf of WorkSafe New Zealand's Board and Executive Leadership Team, welcome to the Workplace Relations and Safety portfolio. We look forward to working with you.

Ten years ago, the *Independent Taskforce on Workplace Health and Safety* (the Taskforce) led a national conversation about achieving urgent health and safety change.

Its vision was for New Zealand to be one of the best places in the world to work, and for workers to come home at the end of the day healthy, safe, and well.

The Taskforce recognised that effective health and safety regulation has a key role to play to support this vision. WorkSafe was established in 2013 as one of several recommendations to strengthen New Zealand's work health and safety system.

A recent *Business Leaders Health & Safety Forum* report estimated the cost of workplace accidents and deaths in New Zealand was \$4.4 billion per year. Reducing work harm improves personal, economic, and social outcomes for everyone.

New Zealand has made progress in the past 10 years, but there is more to be done to reduce work harm. Improving outcomes requires all participants in the system (including government, business, iwi and workers) to play their part.

This briefing provides an overview of:

- WorkSafe's role, operating context and immediate matters for your attention
- New Zealand's health and safety landscape
- Our regulatory environment and core activities.

WorkSafe officials are available to meet with you to discuss this briefing at your convenience.

We look forward to meeting you.



**Jennifer Kerr**  
Chair



**Steve Haszard**  
Chief Executive

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# 1.0

## Organisational context

# WorkSafe is an important contributor to New Zealand's productivity and wellbeing.

## 1.1 Overview

WorkSafe was established following the tragic events of the Pike River Mine disaster, which resulted in the deaths of 29 workers.

Health and safety outcomes in New Zealand have improved since Pike River, most notably there has been a reduction in work fatalities and serious non-fatal injuries. However, our national performance is still behind the countries we compare ourselves to, including Australia and the United Kingdom.

Improving national health and safety performance is a collective effort. WorkSafe is committed to playing our part alongside government, business, unions, workers and iwi to support what New Zealand needs:

- a cooperative and well-functioning health and safety system
- clear and effective legislation and regulations
- capacity and capability within its regulatory system.

WorkSafe is undergoing significant change. This briefing provides information about WorkSafe's role, functions and an overview of the health and safety system and summarises WorkSafe's change context at a high level.

<sup>1</sup> See 'Definitions' section at the end of this document.

## 1.2 Our purpose and role

Our vision is that everyone who goes to work comes home healthy and safe. Our objectives are to promote and contribute to a balanced framework for securing the health and safety of workers and workplaces, and to support the safe supply and use of electricity and gas in New Zealand. The latter role extends our remit from workers and workplaces to safety in New Zealand homes.

As the primary health and safety regulator, we give effect to our statutory functions under the WorkSafe New Zealand Act 2013 through the regulatory tools provided by the Health and Safety at Work Act 2015 (HSWA).

We have a range of regulatory tools at our disposal to help prevent harm and monitor and enforce compliance, including providing guidance documents, using exemption powers, and developing Safe Work Instruments.

Our energy safety role includes:

- safeguarding people and property from the dangers of gas and electricity
- managing the safety of transmission generating systems
- gas and electricity distribution and supply
- appliances and installations.

WorkSafe's Energy Safety team also audits electrical suppliers and products, and investigates gas and electricity incidents, utilising enforcement measures for non-compliance.

The energy safety roles currently sit within, and are funded through, the Energy and Resources Portfolio, and reporting is to the Minister for Energy and Resources.

## 1.3 Our place in the system

WorkSafe is part of a wider health and safety system that is collectively responsible for national health and safety performance. We work alongside our policy agency, the Ministry of Business, Innovation and Employment (MBIE), other HSWA regulators (Maritime NZ, Civil Aviation Authority and Environment Protection Authority), and the New Zealand Police, Waka Kotahi, ACC, business, unions and iwi.

Under HSWA, businesses and organisations<sup>1</sup> have the primary legal duty to ensure the safety of workers and workplaces, so far as is reasonably practicable. It is their job to keep people safe, and it is our job to hold them to account. A key recommendation of the WorkSafe strategic baseline review is that we constantly and consistently reinforce that businesses and organisations are legally responsible for health and safety, rather than WorkSafe. This message is being reflected in our communications approach.

WorkSafe is accountable to the public and Government. WorkSafe's accountabilities (objectives, deliverables and performance expectations) are set out in the Statement of Intent (to be provided every three years) and Statement of Performance Expectations (prepared annually).

As a Crown agent under the Crown Entities Act 2004, WorkSafe is required to report its performance, including activities, achievements and progress on deliverables to the public and Government annually. The Annual Report 2022/23 will need to be presented to the House of Representatives within five working days of receipt, or as soon as possible after the commencement of the next session of Parliament. Further information will be provided to your office. WorkSafe also provides you with a quarterly report on performance, copied to MBIE, which monitors WorkSafe on your behalf.

<sup>1</sup> Known as Persons Conducting Business or Undertakings (PCBUs) in our legislation.

## 1.4 Responding to the 2022 strategic baseline review

WorkSafe participated in a strategic baseline review during 2021 and 2022 as part of ongoing discussions about funding with Government and MBIE. The review found that while WorkSafe was performing its core regulatory functions, more work was needed to achieve a sustainable funding model and clarity about the outcomes we are delivering for New Zealand.

The review also noted that WorkSafe will never have sufficient resources to address all health and safety risks across the breadth of the economy. It made a range of recommendations, which we accepted, and we are working to implement. In agreement with MBIE, we have prioritised the delivery of eight of the 20 strategic baseline review recommendations.

The eight priority recommendations encompass: developing and communicating a clear and consistent strategy; demonstrating clarity of our regulatory role within the Health and Safety system; strengthening our financial management capability; demonstrating the relationship between what we do, the impacts of this and outcomes we are aiming for; measuring the results and quantifying the costs to demonstrate value for money; and focusing on how to make existing arrangements for ACC-funded injury and harm prevention work as set out in the Accident Compensation Act 2001.

A new five-year regulatory strategy is under development, with external consultation scheduled to begin once the draft strategy has been approved by the Board. The strategy signals a streamlined approach to delivering our core regulatory functions, focused on the areas where we know too much harm is occurring and where we can make the biggest difference. The strategy will be supported by a three-year implementation plan that drives change into and throughout our organisation.

## 1.5 Organisational change

Over the last 10 years WorkSafe has experienced sustained growth. Funding has increased from \$87 million in 2014/15 to \$137 million in 2023/24, and FTE numbers increased from 380 to 746 over the same period. Funding increases have encompassed our expanded role, such as mentally healthy work, and included unexpected events like COVID-19 and Whakaari, and ICT funding to migrate away from MBIE to set up standalone systems. Funding changes over time are summarised as **Appendix 1**.

WorkSafe has recently consulted with kaimahi on an organisation change to streamline activities and refocus on core functions. The final design includes an overall reduction in roles within WorkSafe to remain within our 2023/24 funding envelope. There have been no reductions in inspector or investigator roles and it remains our intention to grow those numbers over time. However, the changes have resulted in some non-frontline support functions operating at reduced service levels. This means WorkSafe may be limited in its ability to respond to sizeable new challenges.

Changes to WorkSafe's structure were confirmed on 2 November 2023, and the new structure will take effect from 1 February 2024.

This has been a challenging period for WorkSafe that has required additional support from Government. Accordingly, our monitoring agency, MBIE, has upgraded WorkSafe's risk profile from 'on watch' to 'intensive monitoring' and has appointed an independent observer for the Crown. WorkSafe is engaging with the independent observer in good faith.

Profiles of our Board and Executive Leadership Team are attached as [Appendices 2 and 3](#)

### KEY POINTS

- WorkSafe is moving at pace to:
  - implement the recommendations of the 2022 strategic baseline review
  - take immediate steps to streamline staffing to ensure we remain within our 2023/24 fiscal envelope
  - deliver a regulatory strategy focused on core regulatory delivery.

## 1.6 Whakaari | White Island

Whakaari | White Island (Whakaari) is an active volcano 48 kilometres off-shore from Whakatane. Whakaari erupted on Monday 9 December 2019. Of the 47 people on Whakaari at the time of the eruption, 22 people (tourists and tour guides) died as a result of injuries sustained during the eruption, and 25 people were injured.

On 30 November 2020, 19 charges were filed against 13 defendants.

The Whakaari prosecution is the largest and most complex case taken under HSWA, and one of New Zealand's largest criminal prosecutions. The trial phase of the prosecution was completed in September 2023, and the sentencing hearing is set down for February 2024.

The prosecution could have significant implications for public confidence in New Zealand's health and safety system and the tourism sector (given both the nature of the activity during which harm occurred, and the significant international interest in the case).

The prosecution seeks to hold to account duty holders across the entirety of the work supply chain. s9(2)(g)(i)

WorkSafe is currently seeking leave to appeal to the High Court (regarding two defendants whose charges were dismissed) on the scope of the legal duty for parties involved in a supply chain arrangement. Appeals are an established part of the litigation process and, given the scale and precedent-setting nature of the case, further appeals could occur regarding the results of the upcoming sentencing.

After the Whakaari prosecution is completed, there also will be a Coronial Inquest. WorkSafe has not yet been advised by the Chief Coroner as to when the inquest will commence.

To ensure WorkSafe has access to sufficient funding to complete both the prosecution process, and the Coronial Inquest, to a high standard, Government recently provided contingent funds from the Health and Safety at Work Levy. Decisions about drawing down this funding are made by you and the Minister of Finance.

Because of the high public, media and international interest in this case, as well as Government's recent investment, we will keep you informed of major developments under the no surprises policy (while ensuring the appropriate independence of regulatory and prosecution decisions).

A summary of the outcomes of the trial phase of the Whakaari prosecution is attached as [Appendix 4](#)

A further briefing can be provided at your request.

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# 2.0

## Health and safety in New Zealand

The information in this section supplements the Briefings to the Incoming Ministers prepared by the Ministry of Business, Innovation and Employment, as part of WorkSafe’s statutory function to provide advice on the effectiveness of the health and safety system.<sup>2</sup>

## 2.1 Overview

Harm from work creates significant social, economic, and personal costs to New Zealand.<sup>3</sup> A recent report from the *Business Leaders Health and Safety Forum*, using WorkSafe and ACC data, estimated the cost of workplace deaths and accidents was \$4.4 billion per annum.<sup>4</sup> On the other hand, good work health and safety creates a range of positive economic and social indicators, such as higher productivity (largely through reduced absenteeism and presenteeism).

Poor health and safety has always cost New Zealand, but the Pike River Mine disaster was our watershed health and safety moment. Following the Royal Commission on the Pike River Coal Mine Tragedy Inquiry, the *Independent Taskforce on Workplace Health and Safety* (the Taskforce) led a national conversation about systemic health and safety change in New Zealand.<sup>5</sup>

The Taskforce made several recommendations to Government, designed to bring about an urgent but sustained step-change for work health and safety performance. This included:

- reforming New Zealand’s health and safety legislation, based on Australia’s Model Law
- strengthening rules and requirements around worker participation
- establishing a dedicated, arms-length health and safety regulator.

The Taskforce also recommended a ratio of 1.07 frontline inspectors per 10,000 workers. In 2013 WorkSafe had a ratio of 0.84 inspectors. This has fallen to 0.62 per 10,000 workers in 2023, due in part to population and economy growth.

This ratio is a blunt metric, because it doesn’t take into account how the economy has grown, and in particular whether business growth includes high or low risk activities. However, it is one of the metrics which can be internationally benchmarked so it can be useful to some extent. There have been no reductions in inspector or investigator roles in the recent organisation change.

Businesses inspected by WorkSafe inspectors experience statistically significant reductions in serious ACC claims compared to businesses that are not inspected. Put simply, our inspections are proven to deliver benefits to New Zealand.

There is more to be done in the areas the Taskforce identified would strengthen work health and safety in New Zealand. Specific opportunities are set out throughout this briefing.

<sup>2</sup> Section 10(b), WorkSafe Act 2013: make recommendations for changes to improve the effectiveness of the work health and safety system, including legislative changes.

<sup>3</sup> Work-related health | WorkSafe

<sup>4</sup> State of a Thriving Nation: Health, Safety and Wellbeing in New Zealand (forum.org.nz)

<sup>5</sup> Executive report of the Independent Taskforce on Workplace Health & Safety - He Korowai Whakaruruhau (mbie.govt.nz)

## 2.2 Health and safety legislation and regulations

The Health and Safety at Work Act 2015 (HSWA) provides the overarching framework for securing the health and safety of workers and workplaces. It places legal duties on businesses, organisations and workers. It also extends duties to:

- directors and other people who influence the management of the business (**officer duties**)
- designers, manufacturers, importers and installers (**upstream duties**)

HSWA also requires that each duty holder is individually accountable for risks that are shared and span multiple organisations; these require deliberate coordination and cooperation.

HSWA is deliberately broad and non-prescriptive, and most work falls under it. To counter this, the duties imposed on businesses and organisations are balanced by a test of what is reasonably practicable and what is within their influence and control.

HSWA also crosses legislative and government agency boundaries, such as work-related vehicle incidents on public roads. Being clear about WorkSafe's role in relation to the roles of other agencies is an ongoing focus, and we are contributing to cross-government work to extend Maritime NZ's HSWA designation and consider whether Waka Kotahi should have a designation under HSWA (to regulate health and safety on ports and in the transport sector respectively).

HSWA is supported by a suite of regulations which set more specific and detailed requirements for high-risk work such as hazardous substances, asbestos, major hazard facilities, and mining and quarrying. Clear, workable regulations are a prerequisite for a high-performing system.

MBIE leads regulatory modernisation work on behalf of the Government. Despite sustained effort by MBIE and WorkSafe over the past 10 years, key regulations that round out the health and safety regulatory framework, are out of date or incomplete. This includes plant and structures and working at heights (including scaffolding) regulations, the drafting of which is well progressed by MBIE. Regulations that are not fit for purpose create risks to workers and make it difficult to secure compliance, which can create costs for businesses and the Crown.

## 2.3 Work-related acute injuries

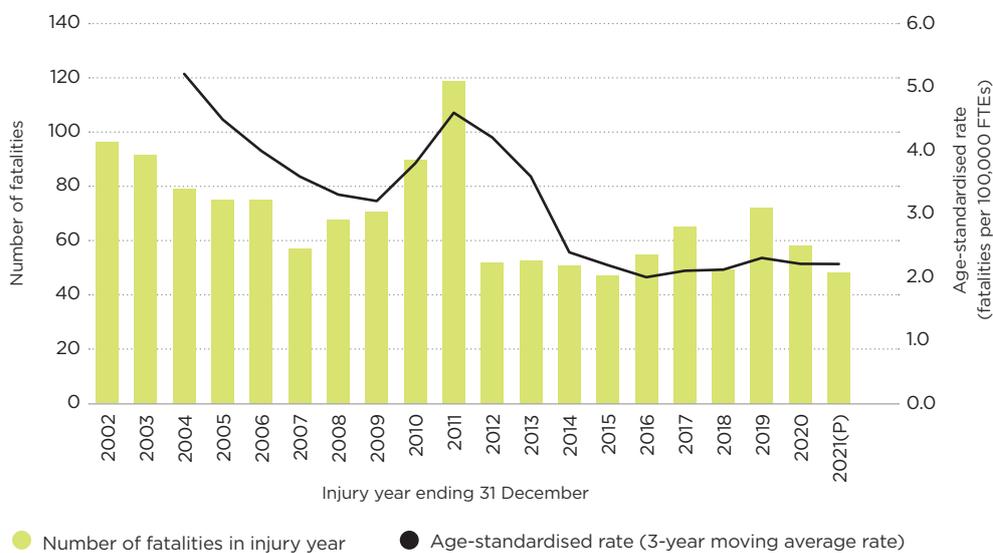
Every year, approximately 50-60 workers die from fatal work-related incidents and approximately 400-500 are hospitalised with a serious injury. Most of this harm is preventable and effective controls are available to eliminate or mitigate risk. Reducing this harm is where most of our regulatory effort is focused.

Over the past two decades, New Zealand has made progress in reducing work-related fatalities. In 2013, the Government set national targets to further reduce fatal injuries, serious non-fatal injuries, and injuries resulting in more than a week away from work by 25% by 2020. Of these:

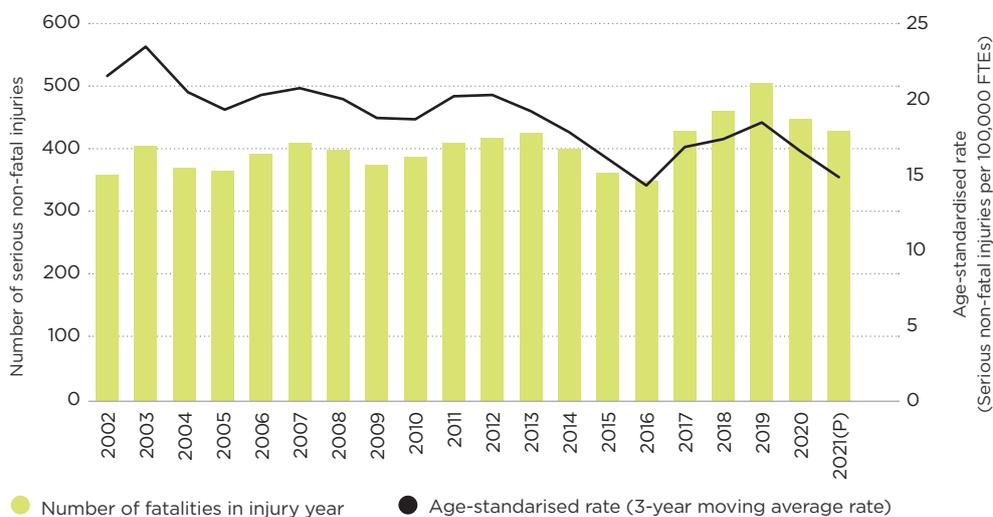
- the 2020 target for fatal injuries was exceeded, with a 33% reduction from that seen in 2008-20, but progress has plateaued in recent years
- the rate of serious non-fatal injuries improved by 14% from 2008-10, but did not meet the target by 2020; the reduction in injury rate reached 23% by the end of 2021 (the latest data available)
- ACC injury claims resulting in more than a week away from work have steadily increased since 2013; however, the overall number of work-related ACC claims (serious and non-serious) reduced by 17% over the same period.

WorkSafe is contributing to MBIE-led advice on new national targets, which you will receive in early 2024. We anticipate that any new set of national targets would cover a broader range of areas, including possible targets for work-related health and equitable outcomes.

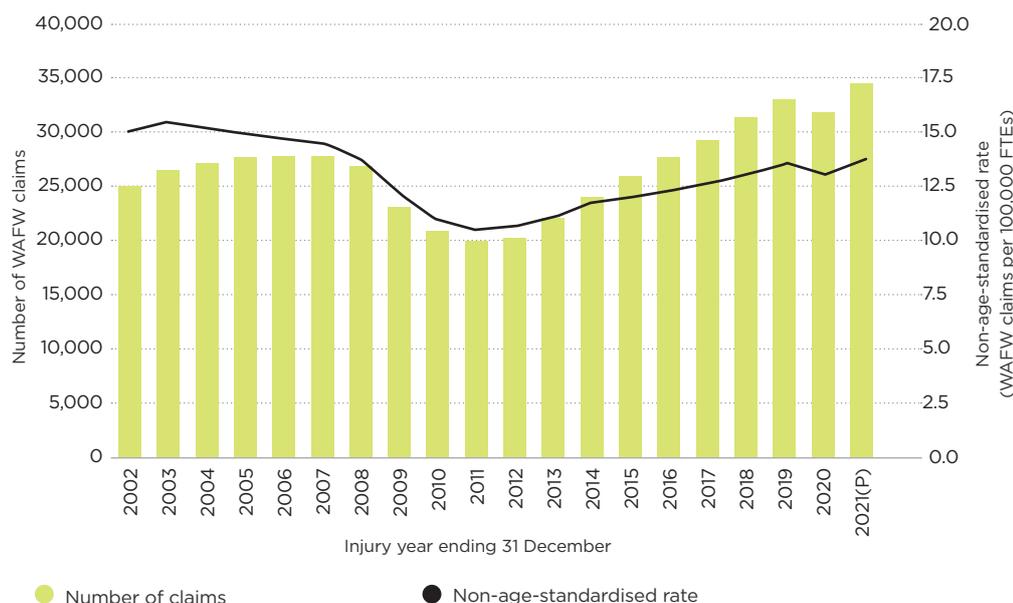
The biggest contributors to work-related fatalities are vehicles, which account for at least 50% of all worker fatalities, around half of these occurring on public roads and the remainder on farms and other worksites. Workers being hit or trapped by objects accounts for 23% of fatalities, and falls 11%, with a variety of causes accounting for the remaining 15%. Causes of serious non-fatal injuries are broader than for fatalities but follow a similar pattern. Figures 1 and 2 show how fatalities and serious non-fatal injuries have trended over time.



**FIGURE 1:** Work-related fatal injuries, number and age-standardised rate, 2002-21



**FIGURE 2:** Work-related serious non-fatal injuries, number and age-standardised rate, 2002-21



**FIGURE 3:** Work-related injury claims resulting in more than a week away from work, number and non-age-standardised rate, 2002–21

The burden of acute work harm is not shared equally. There is evidence that some groups, including Māori, Pacific Peoples, workers of lower socioeconomic status, migrant workers, older workers and young workers experience higher rates of harm or exposure to risk.

Māori in particular experience a higher rate of work-related harm than non-Māori. Statistics NZ Serious Non-Fatal Injury data highlights that Māori are 31% more likely to be injured at work than non-Māori. Further work is required to understand the drivers of this unacceptably high equity gap.

We continue to see high fatality rates in the forestry and logging subsector at nearly 30 times higher than the all-industry rate. Despite wide recognition of the risks associated with this work, the forestry fatality rate did not reduce significantly from 2012–21. Workers being hit by falling objects – primarily trees or logs – is the most common fatal accident mechanism in forestry. It is likely that most forestry fatalities could be prevented by mechanising forestry processes – essentially removing people from the danger zone – particularly for the work activity involved in attaching hauling cables to felled trees (known as breaking out).

### Te Kawa a Tāne - Kaupapa Māori harm prevention in forestry

WorkSafe formed a leadership alliance, called Te Kawa a Tāne, with Te Runanga-o-Turanganui-a-Kiwa, industry leaders and forestry kaimahi in Te Tairāwhiti.

Te Kawa a Tāne is locally led and aims to facilitate collective action to improve health, safety and wellbeing outcomes in forestry in the region.

Priorities, identified through a series of wānanga, include for example incorporating a Te Ao Māori framework into training and operating systems so that we improve outcomes for Māori kaimahi, and duty-holder and worker-led solutions in the forestry sector.

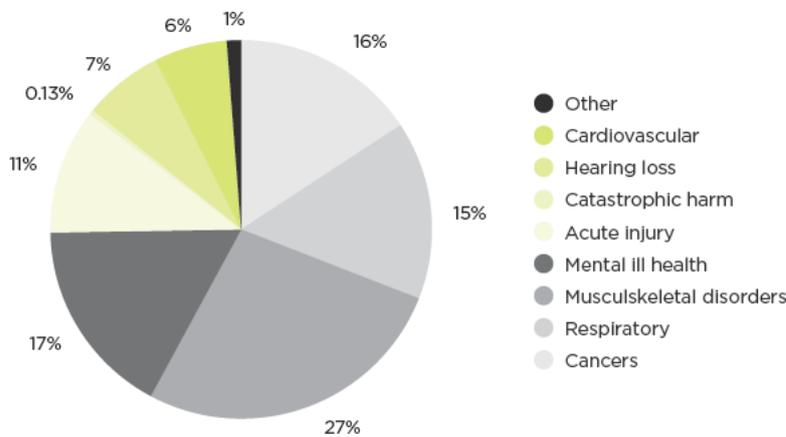
The initiative is an example of WorkSafe jointly delivering a collective response with an iwi group alongside industry, community leaders and kaimahi to address harm in a region where Māori are disproportionately impacted.

Over the past decade acute fatalities involving farm vehicles and older workers have reduced, while still accounting for a disproportionate share of the total. At the same time the number of transport-related fatalities has increased. This reflects wider trends in road safety but may also reflect improved identification of transport accidents that are work-related.

Another priority for the system is reducing acute fatalities in the construction and manufacturing sectors, where rates have not changed over the past decade and international comparisons suggest improvement is possible. Most fatalities in these industries are from preventable causes including on-site vehicle incidents, falls from height, workers being hit by falling objects or being trapped in machinery.

### 2.4 Health-related work harm

In addition to acute harm/fatalities, New Zealand also experiences a high level of work-related ill health. We estimate that a worker is 15 times more likely to die from a work-related health condition than from a workplace accident. Research undertaken by WorkSafe<sup>6</sup> estimates that 750-900 people die each year from work-related health causes and there are an estimated 5000-6000 hospitalisations because of a work-related health condition. There are also several thousand ACC claims for gradual process injuries, such as noise-induced hearing loss. Figure 4 shows the estimated burden of work-related harm across all types of injury and ill health.



**FIGURE 4:** Work-related harm by share of annual Disability Adjusted Life Years (DALYs)

<sup>6</sup> Work-related health estimates and burden of harm | WorkSafe

Work-related health has historically had less emphasis due to limited understanding by businesses and workers of how work creates risks for ill health, challenges quantifying its impact, and limited understanding of how to control risks and create a healthy working environment. To address these challenges, WorkSafe adopted 'healthy work' as one of our three strategic outcomes (alongside safe work and equitable outcomes).

WorkSafe received dedicated funding in Budget 2019 to build our capacity and capability to regulate work-related health, including establishing a Mentally Healthy Work team and specialist health inspectors. WorkSafe has built work-related health programmes, developed guidance and tools, supported workforce development, and invested in research such as the New Zealand Carcinogens Survey and the New Zealand Psychosocial survey.

### Asbestos management in the Government property estate

Asbestos is New Zealand's number one work-related killer, prevalent in buildings across central and local government property. In 2021 WorkSafe led a conference for public service agencies that focused on their duties to manage asbestos.

Following this, a network of public sector agencies was established to manage asbestos risk.

- Kāinga Ora has established asbestos and construction teams and specific asbestos guidance to clarify expectations for removing asbestos in the Kāinga Ora estate
- The Ministry of Education has developed initiatives for managing asbestos in schools, including a principals' guide. It now reviews asbestos management plans' before removal work commences in schools, and is undertaking a small and rural schools asbestos audit programme
- Land Information New Zealand and KiwiRail have completed Asbestos Management Plans for their respective estates
- Auckland Council created a specialist team that carries out asbestos and mould surveys on the thousands of buildings it administers.

Our approach to regulating work-related health is to build cautiously and deliberately, supported by clear enforcement positions that communicate the extent to which WorkSafe will be active in these harm areas. Managing stakeholder and system expectations is an ongoing focus for WorkSafe.

## Accelerated silicosis in engineered stone workers

The health risks from exposure to respirable crystalline silica (RCS) have been known for decades. In 2018 a previously rare form of silicosis began to emerge in Australia and other jurisdictions in workers who fabricate engineered (artificial) stone benchtops. Engineered stone can contain more than 90% crystalline silica. Accelerated silicosis is an aggressive form of silicosis that appears sooner and may progress faster than the more common chronic silicosis, with limited treatment options. It generally manifests after 3-10 years of exposure to high levels of RCS dust although cases overseas have occurred after less than one year's exposure. Given the short latency of the disease, those diagnosed are on average younger than typical chronic silicosis cases.

Since 2019 WorkSafe, ACC and Manatū Hauora have been working together with medical and occupational health professionals to identify workers most at risk of accelerated silicosis, enable them to have their health assessed so they can get the treatment and care they need, and ensure safe work practices in the industry. As at March 2022, from 124 claims lodged with ACC for a health assessment, 4 cases of probable accelerated silicosis and 10 cases of chronic silicosis had been diagnosed (numbers are expected to be updated soon).

WorkSafe inspectors have conducted several rounds of assessment visits to all known engineered stone businesses to ensure they continue to maintain safe work practices and to advise workers of the health assessment available. As a consequence, improvements in work practices have occurred and there is greater awareness of the risks to worker health. Guidance on safe work practices has been developed and information on the key controls and the health assessment pathway is available in multiple languages. WorkSafe has also halved the standard for RCS to 0.025mg/m<sup>3</sup>. Work is also underway led by MBIE to scope options to manage risks from engineered stone.

### KEY POINTS

- Improving work health and safety is a collective effort. Business, workers, and Government need to work together and make health and safety a collective priority
- New Zealand has made progress in the last decade, but there is still significant room for improvement
- Clear, workable regulations benefit business and Government.

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# 3.0

## WorkSafe's responsibilities

For WorkSafe, being effective means focusing on the workplaces and industries where risk is greatest.

### 3.1 Scope of responsibilities

Our legislation covers most work, including high-risk and/or high-consequence work such as major hazard facilities (for example, power plants and chemical manufacturers); the petroleum, geothermal and extractive industries; and tunnelling and quarrying operations. We also regulate high-risk activities such as adventure activities, scaffolding, and pressure equipment. A list of regimes that we have a role in regulating is in [Appendix 5](#)

WorkSafe's broad role under HSWA creates complexity, and it can be challenging to communicate when and why we do or do not intervene. We can be perceived as either heavy-handed or ineffective, depending on our intervention decision.

It is not possible to eliminate all health and safety risk, so the law requires PCBUs to provide the highest level of protection for workers and the public, so far as is reasonably practicable.

For WorkSafe, being effective means focusing on the workplaces and industries where risk is greatest, and being clear about what we will and won't do, and why. Publicly available intervention criteria and enforcement decision diagrams help regulated stakeholders, Government, and the public understand our regulatory approach.

Even still, WorkSafe receives significantly more notifications of work harm than we can respond to. This necessitates hard choices that are tested strongly - often in the public and the media - particularly when there are vulnerable people involved.

## 3.2 How we regulate health and safety

WorkSafe is New Zealand's primary health and safety regulator. In practice this means that, unless specified otherwise in the legislation, WorkSafe is the responsible regulator and the only entity that can discharge certain regulatory functions under HSWA.

Our statutory functions under the WorkSafe Act 2013 are a mix of specific regulatory functions (such as licensing and enforcement) and broader system-focused functions (such as fostering relationships between duty holders and workers). This provides scope to focus on the areas that most require attention. This is important because WorkSafe receives between 10,000 and 20,000 notifications and health and safety concerns each year, and we need to prioritise our resources to where they can make the biggest impact. We use data and insights to identify where to focus our efforts.

### Company Risk Model

WorkSafe's proprietary Company Risk Model (CRM) is a data tool that assigns risk scores and profiles to almost every PCBU in New Zealand. It creates a comparative estimate of health and safety risk to predict the likelihood of a workplace incident and generates a risk score at company or industry level.

CRM allows us to target our regulatory activity to where it is most needed by providing inspectors with richer and more targeted information about an organisation's risk profile, helping us to focus our resources where they can have the biggest impact.

We use a range of regulatory tools to achieve outcomes based on the circumstances, rather than having fixed responses to non-compliance. This approach helps to ensure a proportionate response based on organisations' willingness and ability to comply. This model is a good fit for our broad performance-based legislation and suits the concept of the balanced framework.

We have choice about how and where to deploy our regulatory resources. To ensure we continue to focus in the right areas, we categorise our regulatory activities into core (the things only we can do as primary regulator, such as enforcement) and supplementary (the things enabled by the WorkSafe Act, but can be delivered by or through others, such as research and evaluation).

### 3.3 Core delivery

#### Advice and guidance

One of our core roles is to develop guidance, in consultation with industry, to identify and clarify how PCBUs can comply with their duties under HSWA. Clarity about duties can reduce the cost of compliance for PCBUs, and good guidance tends to be associated with a positive return on investment due to reach and the potential to lift quality across the board.

We help duty holders to understand their obligations under new legislation. We are currently developing guidance for Adventure Activities, to provide new and updated industry guidance about recent reforms in that area. Clear, plain language guidance on new legislation allows PCBUs to get information they need directly from WorkSafe, potentially reducing their costs by preventing the need to engage health and safety consultants.

We also run public safety campaigns to educate energy consumers on identifying and managing risk to improve the safety performance of the supply and use of energy and products.

#### Approved Codes of Practice

Approved Codes of Practice (ACOPs) are guidance documents approved by Ministers that set out detailed guidelines for undertaking work. ACOPs are useful where codifying a single means of compliance across an industry may lift health and safety performance. ACOPs can be used as evidence of whether a duty or an obligation under HSWA has been met. Although ACOPs are not mandatory, they are often perceived to be, making them powerful compliance tools in the right circumstances.

We are currently working with kaimahi and industry to review the ACOP for forestry to provide clear plain English guidance for that sector. We are also updating our asbestos ACOP in close collaboration with International Accreditation New Zealand (IANZ), asbestos removalists, councils, and the Ministries of Health, Education and Defence.

One of the key findings of the strategic baseline review was that many of WorkSafe's and MBIE's regulatory instruments are out of date (for example, when standards or industry practice change), creating regulatory risk.<sup>7</sup> We are working on progressively updating documentation through a risk-based approach, including looking into revoking pre-HSWA ACOPs, which were developed under the more prescriptive Health and Safety in Employment Act 1992. Regulatory risk remains while this work is still underway, and moving more quickly to resolve it would likely require a dedicated work programme.

<sup>7</sup> WorkSafe New Zealand Strategic Baseline Review (mbie.govt.nz) page 49.

## Authorisations and exemptions

WorkSafe has a significant statutory role in granting authorisations and overseeing authorised activity. Authorisations include licences, recognitions, permits, registrations, certificates and consents or approvals. WorkSafe is currently responsible for 15 separate authorisation regimes, including adventure activities, amusement devices, asbestos, electrical safety, gas safety, geothermal, hazardous substances, major hazard facilities, mining/quarrying, occupational divers, petroleum, pipelines, powder actuated tool operators, PECPR<sup>8</sup>, and scaffolders.

The regulations for these regimes prescribe 59 distinct authorisation (or 'permissioning') activities for high-risk workplaces, plant, hazardous substances, or work activities. These can range from, for example, administering the licensing and certification of individuals or PCBUs through to consents and approvals for locations, equipment, work methods and specific documents. Our regimes cover an estimated 8,000 authorised parties. In turn, we estimate these parties undertake more than 180,000 assurance activities or authorisations.

We have undertaken specific improvement activities to reduce regulatory risk in key authorisations regimes, including Adventure Activities. A broader programme of work is being planned to strengthen other regimes. [REDACTED]

s9(2)(g)(i) [REDACTED]

Compliance monitoring by third parties is integral to the overall safety of the regulatory framework. It allows us to utilise the skills and resources of authorised parties to achieve health and safety outcomes by accessing economies of scale. Authorisation regimes are usually used in response to risk of harm – either to workers or the public – and warrant a higher level of intervention than simply relying on compliance with general or specific legal duties.

Authorisation regimes help reduce the risks of activities by regulating entry to the market, determining the people, organisations, activities, places or things that are and are not authorised. They also regulate exit from the market through suspending, cancelling, or revoking previously granted authorisations. Finally, they provide assurance that good health and safety management practices are in place, so an activity that would otherwise be prohibited can continue without exposing people to avoidable risks to their health and safety.

WorkSafe also has powers to exempt people or groups from HSWA regulations in certain contexts. Exemptions are generally used where a PCBU is unable to comply with a specific regulation and it would be unreasonable to require them to become compliant, considering the health and safety risks present in a situation. WorkSafe can only grant exemptions if certain criteria are met.

The process for applying for exemptions and administering the decision outcomes can be costly and time-consuming for both PCBUs and WorkSafe. Increasingly we are looking to exemptions to manage issues caused by out-of-date or ineffective regulations. This is a high-cost option for Government compared to progressing the regulatory reform programme. We recommend you consider regulatory reform from the dual perspective of improving health and safety outcomes and reducing compliance costs for regulated stakeholders.

<sup>8</sup> Pressure Equipment, Cranes and Passenger Ropeways

## Monitoring, compliance and enforcement

An important part our work is to hold employers and businesses who do not meet their duties to account fairly and proportionately. WorkSafe has trained and warranted inspectors and investigators who have a range of tools available when issues arise. This includes undertaking investigations into health and safety incidents and taking prosecutions where necessary. We have a high-quality in-house legal team, and we use external prosecutors where necessary. Prosecution success rates is one of our key performance measures, and we perform strongly in this area.

### Enforcement decision model

The Enforcement Decision-making Model (EDM) provides a framework that guides WorkSafe's inspectors in making decisions about enforcement response appropriate to the circumstances. Capturing the enforcement decision-making process in this way supports inspectors to reach enforcement decisions that are consistent, proportionate, transparent, targeted, and accountable. EDM is publicly available and shows the steps we take when making decisions, making it a helpful tool for organisations to understand how WorkSafe engages with them.

We investigate most fatalities and serious injuries that occur in our focus industries (such as construction and forestry). Not every investigation leads to a prosecution. WorkSafe has several other pathways to secure a regulatory outcome including Enforceable Undertakings.

WorkSafe provides a structured, consistent, and fair career development system for inspectors. Career enhancement is based on capability and performance. WorkSafe's Inspector Pathway provides support, structured practice, mentoring, and assessments for readiness. We are developing an Inspectorate workforce planning framework to create a sustainable approach to inspector resourcing.

Our Victim and Coronial Services function helps victims and whānau navigate our processes, as well as WorkSafe kaimahi who engage with victims. This ensures our engagement with victims meets our obligations under the Victims Rights Act, The Victims Code, and the expectations of the New Zealand public. While, Victim and Coronial Services is non-statutory, Government provided ongoing funding to maintain this capability within WorkSafe.

### KEY POINTS

- WorkSafe has a broad regulatory role so we need to target our resources to where we can make the biggest difference. Sometimes this means saying no to issues that fall outside our core activities or focus areas
- The 2022 strategic baseline review identified authorisations regimes as a source of regulatory risk. Work to strengthen Adventure Activities has been completed, and work on the other regimes is being planned
- We take a transparent and proportionate approach to regulating health and safety. Modernised health and safety regulations would benefit business and WorkSafe.

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# Appendices

## **IN THIS SECTION:**

**Appendix 1:** Summary of funding changes over time

**Appendix 2:** WorkSafe Board

**Appendix 3:** WorkSafe Executive Leadership Team

**Appendix 4:** Summary of Whakaari prosecution

**Appendix 5:** List of regulatory regimes

### Appendix 1: Summary of funding changes over time

\$000	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Workplace Relations and Safety – Workplace Health and Safety (M43)	87,061	85,994	85,623	86,123	86,123	86,123	86,123	86,123	86,123	86,123	86,123
Increasing WorkSafe New Zealand’s Capacity to Improve the Health and Safety Outcomes of Workers in New Zealand	-	-	-	-	-	11,680	14,305	14,195	16,810	16,810	16,810
Major Hazard Facilities – Proposed Regulations on Fees and Levies (542: 2016/17 OBU (HYEFU))	-	-	2,240	2,690	2,690	2,690	2,690	2,690	2,690	2,690	2,690
WorkSafe Funding Review Implementation	-	-	-	4,155	4,475	4,920	5,420	5,420	5,420	5,420	5,420
CP – increasing WorkSafe NZ capacity to support the Kigali amendment to the Montreal protocol	-	-	-	-	-	351	415	255	70	70	70
CVD – WR&S – Support for Industry Health and Safety Leadership Groups (time-limited)	-	-	-	-	-	-	1,905	1,800	-	-	-
CVD – WR&S – WorkSafe NZ Operational Response to COVID-19 (time-limited)	-	-	-	-	-	1,257	292	-	-	-	-
WorkSafe’s Budget 2019 funding held in contingency that relates to its Work-Related Health (WRH) programme	-	-	-	-	-	-	3,000	7,000	5,000	5,000	5,000
Government Response to Whakaari   White Island: Litigation Costs and Policy Reform of the Adventure Activities Regime	-	-	-	-	-	-	5,654	5,954	5,587	1,305	-
Access to remaining contingency funding from Budget 2019	-	-	-	-	-	-	-	5,010	5,300	5,300	5,300
WR&S – supporting COVID-19 Vaccination Requirements in the Workplace (time-limited)	-	-	-	-	-	-	-	3,533	-	-	-
Funding WorkSafe’s role under the COVID-19 Public Health Response Act 2021 (time-limited)	-	-	-	-	-	-	-	-	7,716	-	-
Implementing new Plant and Structures regulations (time-limited – ends in 2024/25)	-	-	-	-	-	-	-	-	5,540	2,630	1,320
Adjusting Major Hazard Facilities Fees and Levies	-	-	-	-	-	-	-	-	-	224	242
WorkSafe Remuneration, Inflationary and ICT cost pressures	-	-	-	-	-	-	-	-	-	6,791	5,712
Public Sector Pay Adjustment (PSPA) Contingency	-	-	-	-	-	-	-	-	-	5,409	6,188
<b>TOTAL</b>	<b>87,061</b>	<b>85,994</b>	<b>87,863</b>	<b>92,968</b>	<b>93,288</b>	<b>107,021</b>	<b>119,804</b>	<b>131,980</b>	<b>140,256</b>	<b>137,772</b>	<b>134,875</b>

**Notes**

- WorkSafe also earns interest and rental income from sub-leases, and harm prevention funding provided through ACC, which is up to \$15m for 2024/25.
- Budget 2022 funding for the PSPA has yet to be drawn down, but it is expected this will occur in the coming months - likely at or near the total in contingency.
- This table excludes the recently approved funding for coronial and victim support services of \$1m per annum.

## Appendix 2: WorkSafe Board



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### Jennifer Kerr

#### *Board Chair*

Jennifer Kerr is a full-time director who has extensive senior executive experience in large high-risk industries both in New Zealand and offshore. Her current governance roles include Chair of New Zealand Trade and Enterprise, Deputy Chair of Callaghan Innovation, director of Waipa Networks Limited, director of Eke Panuku Development Auckland, and member of the New Zealand Police Assurance and Risk Committee. She is an uri of Ngāti Mutunga and Ngāti Tama.



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### Bill Moran

#### *Deputy Board Chair*

Bill Moran has significant experience in the public sector, particularly in business transformation leadership and economic and financial expertise. Bill worked at the New Zealand Treasury for 30 years and was the Chair of Sport New Zealand, High Performance Sport New Zealand and the New Zealand Sports Foundation for five years. He is currently Chair of Southern Generation and a director of Pioneer Energy, as well as a council member of Te Pūkenga. He holds a number of charitable roles. In 2019 he was awarded a Member of the New Zealand Order of Merit for services to State, Sport, and Youth.



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### Kristen Thompson

Kristen Thompson is an experienced lawyer with a background in employment, health and safety, and ACC/personal injury law. She works as a litigator and legal advisor to several not-for-profit incorporated societies and charities, as well as professional bodies. She has extensive experience in health and safety regulation, and was heavily involved in the policy and drafting process of the Health and Safety at Work Act 2015 and its regulations. She sits on a number of other boards, including the New Zealand Institute of Safety Management. She also delivers governance training to crown entity directors.



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### Pauline Lockett

Pauline has a wide range of governance and commercial experience including partner at PriceWaterhouseCoopers for 20 years. She was appointed in 2017 as an independent Director of the Ngāti Te Whiti Whenua Topu by the Māori Land Court and was subsequently appointed by the Trustees as Chairperson of the Trust from 2018 to 2020. Pauline was a Board member of the Taranaki District Health Board between 2010 and 2019, and was the Chairperson from 2013 to 2019.



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### Bill Newson

Bill recently retired as the National Secretary of E tū, New Zealand's largest private sector union. He has senior governance experience as a Board member of Competenz Industry Training Organisation, a founder and trustee of Apprentice Training NZ, and was a member of the 'Work Related Health Advisory Group' advising the WorkSafe Board on occupational health and CHASNZ (Construction Health and Safety NZ). Bill is a current Board member of Waihanga Ara Rau (the Construction and Infrastructure WDC), a member of the Construction Accord Steering Group (ASG) and MATES in Construction, a Trust that intervenes in the issue of mental health in the construction industry.



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### Lois Hutchison

Lois has over 30 years' senior management experience in the public sector in the areas of social justice regulation as the statutory decision maker for the Video Recordings Authority and Deputy Chief Censor at the Office of Film and Literature Classification; in health as General Manager, Hospital Services at Midcentral DHB; and transport as Chief Executive of the Transport Accident Investigation Commission (TAIC). Lois is currently the Deputy Chairperson of the Radiation Safety Advisory Council. She is a Fellow of the Australian Institute of Health and Safety (Hon.) and holds a Master of Public Policy from Victoria University of Wellington, and Master of Science Managing Organisational Performance from Cranfield University, UK.



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### Mark Leslie

Mark is the CE of Pāmu (Landcorp Farming Limited). Growing up on a dairy farm in Reporoa, Mark has a deep understanding of the agricultural sector and its safety challenges. He has held a number of roles spanning operations, logistics, quality assurance, technology and product development. Before joining Pāmu, he was Chief Operations Officer at Silver Fern Farms and spent nearly two decades at Fonterra. Mark is also a director on the board of Safer Farms, supporting farming leaders and workers to protect each other from preventable harm.

## Appendix 3: WorkSafe Executive Leadership Team



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### Steve Haszard

#### *Chief Executive (from 9 October 2023)*

Before joining WorkSafe, Steve was Managing Partner of Meredith Connell for 10 years, and prior to that a lawyer specialising in regulatory compliance. In that role he was involved in assisting various central and local government organisations with their regulatory compliance functions – including set up, structure, strategic planning, and the design and delivery of core functions and capabilities. Steve was the Deputy Chair of the Civil Aviation Authority from 2021 to 2023.



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### Mike Hargreaves

#### *Deputy Chief Executive Strategy and Insights*

Mike has held several executive roles at WorkSafe including General Manager Regulatory Effectiveness and Legal and head of WorkSafe's transformation programme. Mike joined the Department of Labour's legal team in 2002 as a solicitor, becoming a senior solicitor in 2006. In these roles, Mike prosecuted many cases under the Health and Safety in Employment Act, including the Sir Edmund Hillary Outdoor Pursuits Centre following the Mangatepopo canyoning tragedy in 2008. Mike became the Director Litigation for the Department of Labour in 2009. Mike was previously in private practice in Taranaki.



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### Rachel Gully

#### *Deputy Chief Executive Corporate*

Rachel's leadership experience includes as Director for People and Culture at Te Whatu Ora - Capital, Coast and Hutt Valley, where she led the emergency response to the COVID-19 pandemic, the health response to the vaccine mandate, and supported the District Health Board reforms into a single entity, Te Whatu Ora. Rachel was previously Group Manager People and Culture at Oranga Tamariki. Prior to that, she held a number of HR leadership roles including at the Civil Aviation Authority, Customs, and the Ministry of Health.




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## Quin Carver

### *Deputy Chief Executive Enterprise Transformation*

Quin was appointed as General Manager Digital Transformation in March 2021. Before taking up the General Manager role, he initially came to WorkSafe on a secondment to lead the creation of a digital strategy. Prior to joining WorkSafe, he was Deputy Chief Executive - Corporate, and before that Chief Information Officer, at the Ministry of Housing and Urban Development, following 16 years in a range of senior leadership and technical leadership roles at Land Information New Zealand.




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## Kane Patena

### *Deputy Chief Executive Operations*

Kane's previous role was Director of Land Transport and Group GM Regulatory at Waka Kotahi, having joined following independent reviews into Waka Kotahi's regulatory performance. Prior to this, Kane was GM Strategy and Governance at Wellington City Council, and Partner and Crown Prosecutor at Meredith Connell.

Although Kane was born in Auckland, his iwi affiliation is Ngāti Haua in the Waikato Tainui area.




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## Paula Collins

### *Deputy Chief Executive Equity Partnerships and Intervention Design*

Paula is an uri of Ngā Rauru and Ngāti Ruanui and is a Ngāti Toa Rangatira whāngai. She has most recently worked Te Rūnanga o Ngāti Toa Rangatira as the executive leader across Treaty partnerships, culture and the environment. She was previously Regional Commissioner for the Department of Corrections, leading 2,500 staff across five prisons and 30 probation sites, and has held CE and DCE roles in education.

## Appendix 4: Summary of Whakaari prosecution

A summary of the outcomes of the trial phase of the prosecution is set out below.

	NAME OF DEFENDANT	PLEA TO CHARGE(S)	PROSECUTION STATUS
1	National Emergency Management Agency (NEMA)	On 4 May 2022 NEMA successfully applied to have the charge against it dismissed	No longer party to proceedings
2	Inflite Charters Limited	Pleaded guilty and was convicted and sentenced on 31 March 2022	Fined \$227,500 No longer party to proceedings
3	White Island Tours	Pleaded guilty before trial	Will be subject to Sentencing Hearing in February 2024
4	Institute of Geological and Nuclear Sciences Limited (GNS)	Pleaded guilty before trial (to one charge - second charge dismissed)	Will be subject to Sentencing Hearing in February 2024
5	Volcanic Air Safaris Limited	Pleaded guilty before trial	Will be subject to Sentencing Hearing in February 2024
6	Aerius Limited and	Pleaded guilty before trial	Will be subject to Sentencing Hearing in February 2024
7	Kahu NZ Limited	Pleaded guilty before trial	Will be subject to Sentencing Hearing in February 2024
8	Andrew Buttle	Pleaded not guilty	Active defendant during trial; charge dismissed (no case to answer) <b>s6(c)</b> [REDACTED]
9	James Buttle	Pleaded not guilty	Active defendant during trial; charge dismissed (no case to answer) <b>s6(c)</b> [REDACTED]
10	Peter Buttle	Pleaded not guilty	Active defendant during trial; charge dismissed (no case to answer) <b>s6(c)</b> [REDACTED]
11	ID Tours Ltd	Pleaded not guilty	Active defendant during trial; charge dismissed (no case to answer) WorkSafe is seeking leave to appeal the decision to High Court
12	Tauranga Tourism Services Limited	Pleaded not guilty	Active defendant during trial; charge dismissed (no case to answer) WorkSafe is seeking leave to appeal the decision to High Court
13	Whakaari Management Limited	Pleaded not guilty	Active defendant during trial Convicted on 31 October 2023

In summary, this means seven defendants were convicted (six are still yet to be sentenced), and six defendants had their charges dismissed. Of these six who has their charges dismissed, two defendants (in the supply chain) are subject to a possible appeal, **s6(c)** [REDACTED]

## Appendix 5: List of regulatory regimes

Health and Safety at Work (General Risk and Workplace Management) Regulations 2016:

- specified risk management process
- information, training, instruction and supervision
- facilities, first aid and emergency planning
- personal protective equipment
- remote/isolated work
- atmospheres with potential for fire or explosion
- raised and falling objects
- containers of liquids
- loose but enclosed materials
- substances hazardous to health
- exposure monitoring and health monitoring
- duties towards young persons
- additional duties of PCBUs operating limited attendance childcare centres

Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

Health and Safety at Work (Asbestos) Regulations 2016

Health and Safety at Work (Hazardous Substances) Regulations 2017

Health and Safety in Employment Regulations 1995:

- cleaning, maintenance and repair of machinery
- woodworking and abrasive grinding machinery
- self-propelled mechanical plant
- construction excavations
- scaffolding
- working at heights
- certificates of competence for high-risk work - divers, powder actuated tool operators, scaffolders
- noise
- notification of hazardous work - scaffolding, excavations, various others.

Health and Safety in Employment (Pressure equipment, cranes and passenger ropeways) Regulations 1999

Amusement Devices Regulations 1978 (made under Machinery Act 1950)

Electricity Safety Regulations 2010 (made under Electricity Act 1992),

Spray Coating Regulations 1962 (made under Health Act 1956)

Lead Process Regulations 1950 (made under Health Act 1956)

Health and Safety at Work (Adventure Activities) Regulations 2016

Health and Safety at Work (Major Hazard Facilities) Regulations 2016

Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016

Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016

Health and Safety in Employment (Pipelines) Regulations 1999

Geothermal Energy Regulations 1961 (made under Geothermal Energy Act 1953)

Health and Safety at Work (Rates of Funding Levy) Regulations 2016

Health and Safety at Work (Infringement Offences and Fees) Regulations 2016

We also have roles under other Acts, including:

- **Hazardous Substances and New Organisms Act 1996**, under which we are the enforcement agency for ecotoxic and disposal controls in any workplace, distribution system, or gas appliance.
- **Accident Compensation Act 2001**
- **Crown Minerals Act 1991**

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