



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



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# Recovering the regulatory costs for Major Hazard Facilities

**Consultation document on resetting fee and levy rates**  
**26 January 2022**

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## How to have your say

We want to know what options you think will best ensure that Major Hazard Facilities fees and levy rates are fair, efficient, effective, transparent, and that there is sufficient levy and fee revenue to appropriately fund WorkSafe New Zealand's regulatory activity to monitor and enforce the MHF Regulations, provide guidance, advice and information to operators of major hazard facilities, and to support safety in the Major Hazard Facilities sector.

Please send your written submission on the options and questions in this consultation document by **5pm on 8 March 2022**. You can make your submission (preferably using the submissions template) as follows:

1. Include your name, the name of your organisation (if applicable), and contact details.
2. Your submission may respond to any or all of the questions in the consultation paper. Where possible, please include information or evidence to support your views. We also encourage your input on any other relevant MHF fee and levy matters in the "Other comments" section.
3. Sending your submission:
  - a. Attach as a Microsoft Word document or searchable PDF and emailing to [HSWregs@mbie.govt.nz](mailto:HSWregs@mbie.govt.nz) (preferred), or
  - b. Mail your submission to:

Health and Safety Policy  
Workplace Relations and Safety Policy  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140

If you have any questions on the submissions process, please contact [HSWregs@mbie.govt.nz](mailto:HSWregs@mbie.govt.nz).

### Your submission could be made public

The information provided in submissions will be used to inform MBIE's policy development and advice to Ministers on setting Major Hazard Facilities fees and levies. We may contact submitters directly if we require clarification of any matters in submissions.

The *Privacy Act 2020* applies to submissions. Any personal information you supply to MBIE in making a submission will only be used for the purpose of assisting in the development of policy advice as part of this review. When organisations make a submission, MBIE will consider that you have consented to the content being included in any summary of submissions unless you clearly state otherwise. If your submission contains any information that is confidential or that you do not want published, you can say this in your submission. Please clearly indicate if you do not wish your name or other personal information to be included in any summary of submissions that MBIE may publish.

Submissions may be subject to requests for information under the *Official Information Act 1982* (OIA). Please clearly indicate in your cover letter or email with your submission if you have any objection to the release of any information in your submission, and which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take your views into account when responding to OIA requests. Any decision to withhold information requested under the OIA can be reviewed by the Ombudsman.

# Introduction

## Purpose of this consultation

### Why are we consulting on the Major Hazard Facilities (MHF) fee and levy rates?

We are consulting with you to inform a review and reset of the MHF fees and levies that are charged to MHF operators.

The *Health and Safety at Work (Major Hazard Facilities) Regulations 2016* (the MHF Regulations) set fees and levies for MHF operators. The Ministry of Business, Innovation and Employment (MBIE) and WorkSafe New Zealand (WorkSafe) are reviewing the fees and levies, as required by the MHF Regulations.

### What is the consultation about?

As part of this review of the MHF fee and levy rates, we have identified several matters that we want to consult with you on, so that we can address these in the most appropriate way:

**Future costs** over the next five years no longer match the fees and levies originally set in 2016:

1. The levy rates were originally set in 2016 at the level expected to cover WorkSafe's estimated costs of the newly established MHF Regulations. These costs have increased since 2016. To effectively address the risks being managed by the MHF 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.
2. WorkSafe's costs of assessing new safety cases over the next five years will be lower than expected than when the fees were estimated in 2016, while the costs for revised safety cases will be higher for most operators than originally estimated.
3. This means that overall revenue from the current fee and levy rates will be too low to match WorkSafe's expected costs over the next five years.

There is some **cross subsidisation** amongst the different types of levy and fee payers because the fees and levies that are being charged no longer match the costs for each activity:

4. Therefore, some types of operators have been paying less in fees and levies than the cost of the regulatory activity that WorkSafe undertakes for those operators, while some types have been paying more. This means there is some cross subsidisation amongst payers (where the underpayment by some types of operators is covered by the overpayment by other types of operators).<sup>1</sup>

**Past costs** over the last five years have been lower than originally estimated, resulting in surpluses:

5. WorkSafe's regulatory activity and costs over the first five years of the MHF Regulations have been less than was estimated when the fees and levies were originally set in 2016, meaning surpluses have built up in the memorandum accounts for both fee and levy.

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<sup>1</sup> The Treasury's *Guidelines for Setting Charges in the Public Sector* note that cross subsidisation occurs when the charges for providing one type of good or service are put towards the cost of providing another type of good or service. Cross subsidisation should generally be avoided, as the costs are not borne by the users. In this way it is not consistent with the efficient allocation of resources.  
<https://www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector-2017-html>

We want to hear your views about the options to address these issues, in particular the best ways to make sure the future fee and levy revenue aligns as closely as possible with the future costs of WorkSafe’s MHF regulatory activity while minimising cross subsidisation amongst payers.

### **What is out of the scope of this review?**

We are reviewing only the MHF fee and levy rates. We are not reviewing the underlying cost recovery method of MHF fees and levies set in 2016. The wider policy settings and circumstances have been relatively stable, and it is still appropriate to directly recover the costs of MHF regulatory activity from MHF operators. We are not therefore considering any non-regulatory options, for example the removal or replacement of the MHF fee and levy scheme.

### **Structure of the consultation document**

The remainder of this consultation document seeks your views on:

- Background and why there is cost recovery for the MHF Regulations
- The current framework for cost recovery (Status quo)
- The matters we want to address (Problem definition)
- Estimates of WorkSafe’s regulatory costs
- Options to move to full cost recovery and address historic surpluses
- Analysis of these options
- Our preferred option
- Implementation, monitoring and review.

## Background to this consultation

### **The MHF Regulations aim to prevent catastrophic events at major hazard facilities**

The MHF Regulations came into effect on 4 April 2016. WorkSafe is the regulator responsible for the oversight of major hazard facilities under the MHF regulations.

Major hazard facilities store or process very large amounts of particular hazardous substances, and typically include chemical manufacturing sites, gas processing plants, liquid petroleum gas facilities, and other manufacturing and storage depots.

The MHF Regulations aim to prevent or mitigate the effects of incidents involving hazardous substances at major hazard facilities. Major hazard facilities 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.

### **How are major hazard facilities regulated?**

Major hazard facilities 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.

New Zealand currently has 130 major hazard facilities, 75 lower tier facilities and 55 upper tier facilities. These are run by 62 operators.<sup>2</sup>

WorkSafe is the primary agency responsible for providing regulatory services under New Zealand's work health and safety law. These services include a mix of general and more specialist services, depending on the risks involved in different workplaces and contexts.

The MHF Regulations require businesses to have additional systems and controls in place, which in turn need considerable specialised activity from WorkSafe over and above its normal service delivery to all New Zealand businesses. Major hazard facilities sites are often based on complex technical systems, require specific safety plans, demand extensive proactive oversight and mandatory recording and reporting. They depend on effective processes being in place to prevent catastrophic events. Considerable effort is channelled into prevention because the consequences of system failure are so severe.

WorkSafe carries out the following regulatory functions for major hazard facilities:

1. Designation – WorkSafe must designate a facility as a lower tier or upper tier major hazard facility (or neither) following notification by the operator. Current facilities have all been designated, while any future facilities would need to notify WorkSafe and be designated as appropriate. Designation is funded from the MHF levy.
2. Assessment of safety cases – WorkSafe must assess and make a decision (ie accept or reject) on a new or revised safety case submitted by an upper tier major hazard facility. A safety case documents the hazards and risks that may lead to a major incident at a major hazard facility, and the control of those hazards and risks. Only upper tier facilities must submit a

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<sup>2</sup> As at 30 June 2021. Public information about designated major hazard facilities is available at [MHF public information | WorkSafe](#)

safety case, and it must be revised at least every five years and re-submitted to WorkSafe for approval. Safety case assessments (both new and revised) are funded from MHF fees.

3. Regulatory oversight activity – this includes proactive inspections, reactive inspections, and processing notifiable incident reports. This oversight is funded from the MHF levy.
4. Health and safety at work services and activities that WorkSafe provides for all businesses – these are funded from the Health and Safety at Work levy, which is paid by all businesses.

These overall functions and activities have not changed since the fees and levies were first set in 2016.

### **The rationale for cost recovery of MHF regulatory activity**

In 2013 Cabinet agreed that the costs to WorkSafe of administering the MHF Regulations should be more directly recovered from the operators of major hazard facilities, as the services for oversight of major hazard facilities are additional to and distinct from WorkSafe's general work health and safety services.

Major hazard facility operators must also pay the Health and Safety at Work levy and will receive a range of services for the payment of this levy, for example: education, information and advice more generally about health and safety regulation, and on good practice in the management of work health and safety risks not pertaining to major hazard and catastrophic risks; more general implementation and enforcement activity related to breaches of the wider work health and safety legislation, as opposed to the more specific MHF regulations.

Direct cost recovery from MHF operators for specific MHF regulatory activity meets Treasury and Auditor-General guidelines on public sector charging for industry goods and private goods:

1. 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 ability to exclude users implies that it is feasible to charge for use. The Health and Safety at Work levy and the MHF levy are both examples of charging for an industry good.
2. Private good – where users can be excluded from the benefits at low cost, but its use by one person conflicts with use by another. Here there is a strong case for recovering the costs of private goods from those who benefit directly from their provision, eg, fees for direct services to individual businesses. The MHF fee for a safety case assessment is an example of a private good.

The two mechanisms for cost recovery are fees and levies. While boundaries are not absolute:

1. fees are generally better suited for private goods, ie specific services provided directly to individuals, such as safety case assessments of individual MHF facilities and
2. levies are more analogous to a form of tax and 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 MHF operators.

The object is that any fees or targeted levies recover the full costs of WorkSafe's MHF regulatory activities, as otherwise they would be subsidised by all businesses who pay the Health and Safety at Work levy.

Cost recovery is appropriate for the regulatory functions under the MHF Regulations. The operators in control of these facilities are best placed to take action to minimise the need for or the amount of these regulatory services. There is both a private and a club good for MHF operators, as they operate their facilities for gain or reward. The facilities present risks to workers and others who are in the vicinity. Operators are required to manage these risks by operating the major hazard facility safely

and, for the upper tier facilities, to have a safety case assessed and accepted by WorkSafe. It is reasonable that the costs of safety case assessment and regulatory functions under the MHF Regulations are recovered from the facility operators. Government's involvement in the process is justified because of the benefits for workers and the public as a result of these activities supporting safety outcomes.

In April 2016, MBIE consulted on MHF cost recovery options, with the cost recovery model and rates agreed by Cabinet in June 2016 and brought into effect on 1 September 2016.<sup>3</sup> The proposals were adjusted in response to feedback from operators. The Regulations subsequently provide for a full cost recovery mechanism with the following components:

1. Fees for the assessment of safety cases (for upper tier facilities only), with a lower fee for the assessment of a revised safety case.
2. For operators of multiple upper tier major hazard facilities, a fee discounted by 20% for the assessment of a safety case for each additional facility.
3. An annual levy for regulatory oversight activity that is differentiated between lower tier and upper tier major hazard facilities.
4. Further differentiation by three types within each tier, based on the complexity of operation, and which applies to both the safety case fee and the annual levy.

This cost recovery model implemented Cabinet's decision on more direct cost recovery, addressed stakeholder concerns about the level of cost recovery, the distribution of costs within the lower and upper tiers, and adjusted costs for the potential for efficiency gains.

This model fits within the legal authority to charge fees or levies provided by sections 211(k)(xiii) and 215 of the *Health and Safety at Work Act 2015*.

In preparation for this review and as a matter of good regulatory practice, WorkSafe has been monitoring the activities and costs of providing the MHF regulatory services by tier and type of facility, providing more detailed data than was possible when the initial fee and levy amounts were set in 2016. The options in this consultation document have been developed based on this more detailed data.

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<sup>3</sup> The 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>

## Status quo

### What MHF fees and levies are currently charged?

The MHF fees and levies are set out in Schedule 8 of the MHF Regulations.<sup>4</sup> They are differentiated by upper and lower tier, and by type of facility based on complexity.

**Table 1: Major Hazard Facility Types**

Type	Characteristics
Type 1	Every specified hazardous substance is: <ul style="list-style-type: none"> <li>only present, or likely to be present, for the purposes of storage, repacking, or distribution</li> <li>only circulated in a closed circuit (including a refrigeration system)</li> <li>only used in a way that immediately consumes or dilutes the substance so that it ceases to be a specified hazardous substance.</li> </ul>
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.

**Table 2: Major Hazard Facility levy rates**

Category of major hazard facility		Levy (\$)	Number of Facilities
Lower Tier	Type 1	12,500	40
	Type 2	15,000	28
	Type 3	18,000	7
Upper Tier	Type 1	23,000	32
	Type 2	28,000	7
	Type 3	34,000	16

<sup>4</sup> 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](#)



**Table 3: Major Hazard Facility fees**

		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

The fee and levy amounts are based on WorkSafe’s expected major hazard facilities regulatory activity determined in 2016 when the fees and levies were first set. **Annex 1** sets out the activities and underpinning assumptions from 2016.

### **Invoicing processes**

The MHF Regulations set out the following invoicing and payment processes:

- Levies for major hazard facilities are an annual payment invoiced on 1 July of each year and payable by 1 August of each year, except in the first year of operation as a designated major hazard facility, in which case a formula is applied to determine the amount of levy to be paid based on the number of full months since designation.
- WorkSafe may, on request by an operator, extend the time by which an annual levy must be paid.
- WorkSafe may refund the safety case assessment fee (or revised safety case fee) where the safety case is withdrawn before WorkSafe begins assessing it.

### **MHF memorandum accounts**

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.

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:

- increase transparency of charging practices
- protect against an agency inadvertently benefiting from over-recovery
- focus attention on avoiding possible over- or under-recovery, and
- establish an even-handed regime in terms of the treatment of short-term surpluses and deficits, by applying a long-term perspective.

Memorandum accounts should be used wherever:

- third parties are to be charged for services and activities provided on a full cost-recovery basis
- refunding surpluses or levying shortfalls through a contractual arrangement is costly or impractical, and
- the benefits of preparing a memorandum account clearly outweigh the compliance costs involved.

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

The MHF Regulations require that a review of these levies and fees be started five years after the levies and fees came into effect. When fee or levy rates are reviewed, the new rates should take into account any surplus or deficit that has built up in the memorandum accounts, with the intent that the balance tracks towards zero over time.

## **Questions about the status quo**

**Question 1:** Do you agree with this characterisation of the status quo? If not, how would you describe the status quo?

**Question 2:** What other factors do you think should be considered?

## Problem definition

### What is the problem and why?

The amounts currently levied/charged for MHF facilities do not match what we expect the regulatory activity to cost in the future, are inequitable across different payers, and surpluses have built up to date.

We have identified the following problems in our review of the MHF fees and levies:

Future costs over the next five years no longer match the fees and levies originally set in 2016:

1. The levy rates were originally set in 2016 at a level expected to cover WorkSafe's estimated costs of the newly established MHF Regulations. These costs have increased since 2016. In order to effectively address the risks being managed by the MHF 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.
2. WorkSafe's costs of assessing new safety cases over the next five years will be lower than expected than when the fees were estimated in 2016, while the costs for revised safety cases will be higher for most operators than originally estimated.
3. This means that the overall revenue from the current fee and levy rates will be too low to match expected WorkSafe costs.

There is some cross subsidisation amongst the different types of levy and fee payers because the fees and levies that are being charged no longer match the costs for each activity:

4. Therefore some types of operators have been paying less in fees and levies than the cost of the regulatory activity that WorkSafe undertakes for those operators, while some types have been paying more. This means there is some cross subsidisation amongst payers (where the underpayment by some types of operators is covered by the overpayment by other types of operators).

Past costs over the last five years have been lower than originally estimated, resulting in surpluses:

5. WorkSafe's regulatory activity and costs over the first five years of the MHF Regulations have been less than was estimated when the fees and levies were originally set in 2016, meaning surpluses have built up in the memorandum accounts for both fee and levy.

### Better costing information is available than in 2016

WorkSafe now has high quality information on the costs of delivery of the MHF regulatory oversight and safety case activity, which was not possible when the initial fee and levy amounts were set in 2016, before the MHF Regulations had come into effect. This information has provided a more accurate outline of what the actual costs are and how they fall across the different tiers and types of operators.

### More effective regulatory oversight will mean higher regulator activity and costs over the next five years than originally estimated in 2016

In operating the MHF Regulations over the last five years since its establishment, WorkSafe has been improving how it carries out its regulatory activity, to better address the risks being managed by the MHF Regulations. It established two new Specialist Investigator roles in May 2021. These roles will add value by actively investigating notifiable incidents, known to be precursor events to major incidents. This helps ensure that their causes are rectified and insights and trends are shared back with industry. This will bring WorkSafe's regulatory approach into closer alignment with

international regulatory practice. These roles are appropriately funded by the MHF levy as shared information benefits the industry.

### Surpluses due to differences in implementation from original assumptions in 2016

The following surpluses have built up in the memorandum accounts since establishment.

**Table 4: MHF fee and levy memorandum accounts**

<b>\$000</b>	<b>TOTAL BALANCE</b>	ACTUAL 2021	ACTUAL 2020	ACTUAL 2019	ACTUAL 2018	ACTUAL 2017
<b>Memorandum Accounts</b>						
<b>Major Hazards Facilities Levy</b>						
Revenue	12,670	2,560	2,645	2,635	2,636	2,194
Expenditure	(10,127)	(2,573)	(1,746)	(1,744)	(2,370)	(1,694)
<b>Total surplus/(deficit)</b>	<b>2,543</b>	<b>(13)</b>	<b>899</b>	<b>891</b>	<b>266</b>	<b>500</b>
<b>Safety Case Fee</b>						
Revenue	2,862	3	1,866	783	109	101
Expenditure	(1,874)	(6)	(1,068)	(434)	(238)	(128)
<b>Total surplus/(deficit)</b>	<b>988</b>	<b>(3)</b>	<b>798</b>	<b>349</b>	<b>(129)</b>	<b>(27)</b>

These surpluses are due to differences in the operational approach from that anticipated under the original assumptions in 2016, in particular:

1. The most significant contributor to the build-up of reserves was lower staff costs, due to considerably fewer full time equivalent (FTE) staff able to be recruited in the first few years – only two thirds of the estimated FTE – and lower average salary for specialist inspectors than estimated when the fees and levies were established.
2. Costs factored into the major hazard facilities levies that haven't been incurred:
  - 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.
  - e. Contracting of external expertise was lower than anticipated.
3. Lower costs to assess safety cases as this activity was done in-house and the assessments were mostly desk-based:
  - a. A decision was made for major hazard facilities specialist inspectors to assess and make decisions on submitted safety cases, rather than outsourcing work to external resource for this activity. This was seen as an opportunity for the inspectors to gain crucial knowledge about the major hazard facilities and their safety management systems. This meant that fewer site inspections were done in the two years that safety cases were being assessed and consequently less MHF levy was spent.
  - b. The safety case fee was based on the assumption that it would take 411 hours to make a decision on a new safety case, while it has only taken on average 255 hours

per new safety case to date. The lower hours taken to assess a safety case was influenced by the approach taken by the Major Hazard Facilities Unit to do mostly desk-based assessments of safety cases and schedule future site inspections to validate aspects of the safety case, rather than first conducting an intensive site inspection prior to the decision being issued.

While there was a lower level of regulatory activity over the first five years of the MHF Regulations than originally estimated, we consider that this provided an appropriate level of regulatory oversight for a new and developing regulatory regime. For the future and more mature regime, we consider that 15 FTEs provides the appropriate level of resource to proactively respond to issues as they arise, including the ability to adequately resource the investigation of major incidents and the sharing of learnings with industry.

## **Questions about the problem**

**Question 3:** Do you agree with this characterisation of the problems we have outlined? If not, please explain why.

**Question 4:** Do you have any further feedback on the operation of the MHF fee and levy scheme over the last five years?

## Outcome and cost recovery objectives for this review

The overall outcome we are seeking to achieve in this review is to move to fully recovering costs without either surpluses or deficits building up in the memorandum accounts, while meeting the cost recovery objectives outlined below.

To meet this overall outcome, we need to consider options that will:

1. return the current surpluses to fee and levy payers through applying a discounted fee or levy for a period of time
2. minimise cross subsidisation amongst fee and levy payers
3. move to full cost recovery (where revenue matches costs as closely as possible) and ensure that the memorandum account balances track toward zero over time, without requiring significant changes to fee or levy amounts at the next review.

The options also need to meet the underlying policy intent of the MHF Regulations, by ensuring there is sufficient levy and fee revenue to fund the regulator activity to monitor and enforce the MHF Regulations, provide guidance, advice and information to operators of major hazard facilities, and to support safety outcomes in MHF facilities.

The cost recovery objectives are from Treasury and Auditor-General guidance on cost recovery and will be used to analyse the options.

**Table 5: Cost recovery objectives**

Objectives	Rationale	Approach to the analysis
Fairness	This is a key objective – that costs of services are recovered from the users who benefit from them or who create the risk that the service is designed to manage.	The option should fairly reflect the service provided to individuals or groups, be reasonable, and not cross subsidise amongst fee and levy payers.
Effectiveness	The fee and levy rates need to support the policy outcome of the MHF Regulations, ie safety outcomes in MHF facilities.	The option should contribute to achieving the policy outcome of the MHF Regulations. The level of funding should be fit for purpose.
Efficiency	The cost recovery charges should be efficient to administer for both fee and levy payers and the regulator.	The option should allow for efficiency in charging the individual or group identified. The option should keep costs down and quality of service high.
Transparency	The basis and costings for any proposed fees or levies should be clear to payers.	The option should clearly identify the costs and allocate them to the service for the period in which it is provided.

All options being considered meet two further cost recovery objectives, so we will not be specifically analysing each option against these. The first is 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*. The second is consultation – there is opportunity for stakeholders to contribute to the setting of the cost recovery model through the previous and current consultation processes.

## **Questions about the cost recovery objectives of the review**

**Question 5:** Have we identified the correct objectives? What objectives should we use to assess and rank options?

## Cost recovery model

### Main cost drivers for major hazard facilities regulatory activity

Table 6 below outlines WorkSafe’s major hazard facilities activities on average over the next five years. These activities are the main cost drivers recovered by the major hazard facilities fees and levy.

**Table 6: WorkSafe’s major hazard facilities activities – average number per year over the next 5 years**

Facility Type		Designation		New Safety Cases		Revised Safety Cases		Site inspections		Notifiable incidents	
		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	

Table 7 below outlines the costs for WorkSafe’s major hazard facilities regulatory activities, by activity and facility type.

**Table 7: WorkSafe’s major hazard facilities 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



The differentiation in safety case fees between Type of facility was originally set in 2016 to allow for expected differences in site complexity. This review has found that these fees have not reflected the actual costs. In practice, the costs for safety case assessments have been similar across the three Types of facilities, as 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 similar for all Types.

### **Changes since 2016 and underlying assumptions**

Compared to the assumptions and costs in 2016, the changes in activity are:

- 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.
- Overall FTE headcount is unchanged, but there is a slight difference in team composition reflecting the experience of skillsets required built into the current structure of the Major Hazard Facilities unit.
- Internal charges are based on a methodology consistent with the 2016 estimates and have increased due to underlying support cost increases.
- Other related costs such as travel, consultancy, and training have been forecast based on a combination of historic trends and expected activity.

**Annex 2** provides further detail on the cost assumptions.

### **Costing the activity – to fully recover the expected future costs**

Based on these activities and assumptions, the expected future costs for the Major Hazard Facilities unit over the next five years are:

- Major hazard facilities regulatory activity recovered by the major hazard facilities levy will cost **\$14.708 m.**
- Major hazard facilities safety case assessment activity recovered by the major hazard facilities fee will cost **\$1.524 m.**
- Regulatory activity recovered by the Health and Safety at Work levy will cost **\$8.123 m.**

Based on these expected future costs:

- The major hazard facilities **levy rate** is currently set too low for all operators and will not fully recover the costs of the activity over time but will under-collect.
- 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.

## **Questions about how WorkSafe estimates its costs**

**Question 6:** Do you agree with WorkSafe's approach to estimating costs for delivering the major hazard facilities regulatory services? If not, please explain why.

**Question 7:** Do you agree with the assumptions underpinning the costs? If not, please explain why.

**Question 8:** Are there any future changes to the operating environment that you think should be considered that are not included here?

## Options for resetting the fee and levy rates

We are consulting on the following similar options for both the fee and levy rates:

1. The counterfactual scenario – what will happen in the absence of changing the MHF fee and levy rates that were set in 2016, given that WorkSafe’s expected MHF regulatory activity and costs over the next five years will be higher than the estimates made in 2016.
2. Changing the MHF fee and levy rates to return the surplus over time and then move to rates that will fully recover the costs of the regulatory activity.
3. Changing the MHF fee and levy rates to immediately move to fully recover the costs of the regulatory activity, without returning the current surpluses.

MHF levies are charged annually on 1 July, or on entry to the scheme for new facilities. MHF 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.

Therefore we anticipate that any fee changes would start to apply in the 2022/23 financial year, while any levy changes would apply in the 2023/24 financial year (ie July 2023 to June 2024) on the annual invoicing date of 1 July 2023.

### Major hazard facilities levy rates

#### Option 1: No change to levy rates (counterfactual)

Option 1 keeps the MHF levy rates and therefore levy revenue at current levels as outlined in Table 2 above. Future expenditure will increase with an increase in expected regulator activity and costs.

This option neither increases the levy rate nor returns the surplus to operators in the form of a discounted levy. Rather it uses up the surplus in the MHF levy memorandum account gradually over time to meet the expected increase in regulator activity and costs.

Because the expected annual MHF levy expenditure will be greater overall than MHF levy revenue under this option, eventually the MHF levy memorandum account would be moving close to zero at the end of the forecast five-year period. The levy rates would need to be reviewed and reset after five years to ensure that the Government’s policy objective of fully recovering costs directly from MHF levy payers continues to be met.

Cross subsidisation amongst levy payers is not addressed by this option. The levy for all operators would continue to be under-collected over time, ie they will pay too little.

**Table 8: Current MHF levy rates (counterfactual option)**

	Facility Types	Current Levy Rates
Lower Tier	Type 1	\$12,500
	Type 2	\$15,000
	Type 3	\$18,000
Upper Tier	Type 1	\$23,000
	Type 2	\$28,000
	Type 3	\$34,000

## Option 2: Change levy rates to return levy surplus over time and move to full cost recovery

Option 2 returns the accumulated levy surpluses to payers through a discounted rate, with the sub-options provide different timeframes for doing so (year 1 is 2023/24) and therefore different sized rates. After the surplus has been used up, the options set the future levy rate for full cost recovery based on expected regulatory costs over the next five years. We have provided a wide range of timing options for returning the surplus to levy payers and are interested in your views on which options you prefer and why.

- Provide a very large discount in the levy rate in year 1, full cost recovery from year 2
- Provide a large discount in the levy rate in years 1-2, full cost recovery from year 3
- Provide a medium discount in the levy rate in years 1-3, full cost recovery from year 4
- Provide a small discount in the levy rate in years 1-4, full cost recovery from year 5
- Provide a very small discount in the levy rate in years 1-5, full cost recovery from year 6

These options also adjust the levy rates by Type to align with expected costs and to minimise the cross subsidisation across levy payers.

Once the levies are reset to achieve full cost recovery, there will be an increase in the levy rate for all operators from the status quo. (As the levy rate is calculated based on expected costs over the next five years, the expected levy revenue may diverge from expected costs after year 6, depending on variability in future costs).

**Table 9: 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

**Table 10: 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

**Table 11: 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

**Table 12: 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

**Table 13: 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 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

### **Option 3: Change levy rates to move to full cost recovery from year 1**

Option 3 sets the levy rates at the level that will fully recover the costs of expected regulator activity from year 1 (2023/24), without returning the accumulated surplus to levy payers in the form of discounted levy rates.

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

There will be an increase in the levy rate for all operators from the status quo.

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.

**Table 14: Option 3 - Charge full cost recovery from year 1 onwards**

	Facility Type	Full cost recovery
Lower Tier	Type 1	\$14,600
	Type 2	\$17,600
	Type 3	\$19,900
Upper Tier	Type 1	\$28,800
	Type 2	\$35,000
	Type 3	\$39,900

## Major hazard facilities safety case assessment fee

### Option 1: No change to fees (counterfactual)

Option 1 keeps the MHF fees and therefore fee revenue at current levels as outlined in Table 15.

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

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.

Operators of multiple sites will continue to receive a reduction in the fee of 20% for additional sites.

This option does not address the cross subsidisation by new operators of existing operators.

**Table 15: No change to fees (counterfactual option)**

		New 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

### Option 2: Change fees to move to full cost recovery and return fee surplus over the next five-year cycle

Option 2 returns the accumulated fee surpluses to payers through the same discounted fee for all **revised** safety case assessments (including for additional facilities) for the next five-year cycle (2022/23 to 2026/27), returning the current surplus to the existing operators who have contributed to the surplus to date. After five years, the revised safety case fee then moves to fully recovering the costs of expected regulator activity.

This option also aligns the **revised** safety case fees across Types to match actual and expected costs, to minimise the cross subsidisation amongst fee payers. This is because the differentiation in fees between Types originally set in 2016, to account for differences in site complexity, does not reflect actual practice. This proposed alignment across Types results in a higher revised safety case fee for Type 1 and 2 operators than the status quo, and a lower fee for Type 3 operators than the status quo.

The fee for a **new** safety case is adjusted to move to full cost recovery from year 1 (2022/23), resulting in a lower rate than currently charged for all Types of operators. As new MHF facilities have not contributed to the current surplus, they should not receive a discounted rate over the next five years as is being applied to the revised safety case fees.

To better reflect actual costs, the 20% 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.

**Table 16: Option 2 – a discounted fee for revised safety cases for the next five-year cycle, and full cost recovery fee for new safety cases**

Facility Type		Discounted fee to return surplus over next five-year cycle	Full cost recovery fee		
			Revised safety case assessment	New safety case assessment	Revised safety case assessment Fee reduced by 20% for additional facilities
Upper Tier	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

### Option 3: Change fees to move to full cost recovery from year 1 (2022/23)

Option 3 sets the fees for both **new** and **revised** safety case assessments at the level that will fully recover the costs of expected regulator activity. This option also adjusts the fees by Type to align with expected costs and to minimise the cross subsidisation across fee payers:

- **New** safety case fees will drop for all operators of new MHF facilities.
- **Revised** safety case fees will be higher for Type 1 and 2 operators, and lower for Type 3 operators.
- The 20% 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.

This will address the current over-collection of **new** safety case fees and align the **revised** safety case fees with expected costs, but without returning the accumulated surplus to fee payers in the form of discounted fees:

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

**Table 17: Option 3 – move to full cost recovery fee from year 1 (2022/23)**

Facility Type		New safety case assessment fee	Revised safety case assessment fee	Revised safety case assessment fee Fee reduced by 20% for additional facilities
Upper Tier	Type 1	\$31,000	\$28,100	\$22,500
	Type 2	\$31,000	\$28,100	\$22,500
	Type 3	\$31,000	\$28,100	\$22,500

## Options not considered

We have discounted the following options for the reasons outlined below.

### Keeping the regulatory activity and costs at the 2016 level

This option would keep WorkSafe’s regulatory activity at the level anticipated in 2016, in order to also keep the fees and levies at their current 2016 levels. This option would constraint WorkSafe activity to match the revenue received at 2016 rates. We have discounted this option as it does not meet the policy intent of the MHF Regulations. It would not ensure sufficient regulator activity funded at a level and quality to monitor and enforce the MHF Regulations, provide guidance, advice and information to operators of MHFs, and support safety in the MHF sector.

### A flat levy rate for all payers

We have discounted this option as it exacerbates rather than addresses the problem of cross subsidisation amongst levy payers. However the safety case fee has been adjusted to a flat rate as this aligns with actual and expected costs for safety case assessments across Types of operators.

### A flat fee with additional input-based charges for complex or time-consuming cases

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. These types of fees can create an incentive for the fee payers to be efficient in their use of the service provided, for example by ensuring that their applications are completed in full to minimise the amount of time required to process them. For fee structures like these with a degree of uncertainty in the level of charging, there needs to be safeguards in place to ensure that fees are reasonable and justifiable.

We have discounted this option as 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. Most safety cases from now on will be revised rather than new safety cases, and while it is too soon to tell how much variability there will be in processing times for these, we expect it will be less than for new safety case assessments.

### A discounted fee for new safety cases

Returning the surplus via a discounted fee for new safety cases is not equitable to existing operators. New upper tier MHF facilities have not contributed to the current surplus so should not receive a discounted rate.

## **Questions about the options**

**Question 9:** Do you agree that these are the correct options to consider? If not, please explain why.

**Question 10:** Are there any options not discussed here that should be considered? If there are, please outline and explain why.

**Question 11:** Of the options discussed here, please say if there are options you think should not be considered. Please explain why.



# Analysis of the options for resetting MHF fees and levies

## How do the options compare to the counterfactual?

We have analysed the options against the counterfactual scenario, ie what will happen in the absence of changing the MHF fee and levy rates that were set in 2016, given that:

- WorkSafe’s expected MHF regulatory activity and costs over the next five years will be higher than the estimates made in 2016
- MHF levy rates are currently set too low for all operators, and
- MHF fees for new safety cases are currently set too high for all operators, while the revised safety case fees are set too low for most operators.

As outlined in the section above, we have discounted the option of keeping both WorkSafe’s MHF regulatory activity and the fees and levies at the 2016 levels, as this would not ensure sufficient regulator activity funded at a level and quality to support safety in the MHF sector.

Tables 19 and 20 below assess the options against the counterfactual by considering how well they:

1. meet the review’s outcome of full cost recovery and support safety outcomes for MHF facilities
2. meet the four cost recovery objectives of fairness, effectiveness, efficiency and transparency.

<b>Key:</b>	
++	much better than the counterfactual
+	better than the counterfactual
0	about the same as the counterfactual
-	worse than the counterfactual
--	much worse than the counterfactual

## Questions about the options analysis

Please consider Tables 19 and 20 below.

**Question 12:** How suitable do you think these options are for recovering the costs for WorkSafe of its MHF regulatory activity? Please provide information or evidence to support your answer.

**Question 13:** Do you agree with the assessment of these options? If not, please explain.

**Question 14:** Which option do you think is likely to best address each problem and why?

**Table 19: Options for resetting MHF levies**

Cost recovery options	Does it meet the outcome?	Is it fair?	Is it effective?	Is it efficient?	Is it transparent?	Overall comment
<b>Option 1: No change to levy rates (counterfactual)</b>	-	-	-	-	-	Does not support either full cost recovery or MHF safety outcomes over time, continues cross subsidisation amongst payers, not effective in fully funding activity over time, efficient in charging but will not enable a high quality of service over time, doesn't allocate costs/revenue to the right period, and takes a long time to address the surplus.
<b>Option 2: change levy rates to move to full cost recovery and return levy surplus over time</b>	++	++	++	++	++	Supports full cost recovery over time, minimises cross subsidisation, effective in fully funding activity, efficient in charging and enables a high quality of service, and is transparent in allocating costs and revenue to the right period. Of the sub-options, returning the surplus earlier is fairer and more transparent. We are interested in your views on which sub-options are more or less effective or efficient for you.
<b>Option 3: change levy rates to move to full cost recovery from year 1 (2023/24)</b>	+	0	++	+	+	Supports full cost recovery, works to minimise cross subsidisation but does not return surplus to levy payers, effective in fully funding activity, efficient in charging and enables a high quality of service, is transparent in allocating costs to the right period, but not as transparent or as fair in that the surplus is retained.

**Table 20: Options for resetting MHF fees**

<b>Cost recovery options</b>	<b>Does it meet the outcome?</b>	<b>Is it fair?</b>	<b>Is it effective?</b>	<b>Is it efficient?</b>	<b>Is it transparent?</b>	<b>Overall comment</b>
<b>Option 1: No change to fees (counterfactual)</b>	-	-	-	0	-	Continues over-collection and cross subsidisation amongst payers, efficient in charging but doesn't allocate costs/revenue to the right period.
<b>Option 2: change fees to move to full cost recovery and return fee surplus</b>	++	++	++	++	++	Supports full cost recovery over time and addresses over-collection, minimises cross subsidisation, effective in fully funding activity, efficient in charging and enables a high quality of service, and is transparent in allocating costs and revenue to the right period.
<b>Option 3: change fees to move to full cost recovery from year 1 (2022/23)</b>	+	+	++	+	+	Supports full cost recovery over time and addresses over-collection, works to minimise cross subsidisation but does not return surplus to levy payers, effective in fully funding activity, efficient in charging and enables a high quality of service, is transparent in allocating costs to the right period, but not transparent or fair in that the surplus is retained.

## What are the impacts of the options?

This section outlines our preliminary views on the impacts, which we wish to test with you.

### Marginal costs and benefits

Tables 21 to 23 below outlines the marginal costs (an increase) or benefits (a reduction) for levy and fee payers of the **change from the status quo to the full cost recovery rates** (Option 3 for both levy and fee).

**Table 21: Marginal costs or benefits for levy payers**

	Facility Type	Current levy rate (\$)	Full cost recovery rate (\$)	Marginal cost or (benefit) (\$)
Lower Tier	Type 1	12,500	14,600	2,100
	Type 2	15,000	17,600	2,600
	Type 3	18,000	19,900	1,900
Upper Tier	Type 1	23,000	28,800	5,800
	Type 2	28,000	35,000	7,000
	Type 3	34,000	39,900	5,900

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

Upper Tier Facility Type	New safety case assessment			Safety case fee for additional facility		
	Status quo fee (\$)	Full cost recovery fee (\$)	Marginal cost or (benefit) (\$)	Status Quo Fee (\$)	Full cost recovery fee (\$)	Marginal cost or (benefit) (\$)
Type 1	45,000	31,000	(14,000)	36,000	31,000	(5,000)
Type 2	56,000	31,000	(25,000)	44,800	31,000	(13,800)
Type 3	67,000	31,000	(36,000)	54,000	31,000	(23,000)

**Table 23: Marginal costs or benefits for fee payers: Revised safety case assessments**

Upper Tier Facility Type	Revised safety case assessment			Reduced safety case fee for additional facility		
	Status Quo Fee (\$)	Full Cost Recovery Fee (\$)	Marginal cost or (benefit)	Status Quo Fee (\$)	Full Cost Recovery Fee (\$)	Marginal cost or (benefit)
Type 1	20,000	28,100	8,100	16,000	22,500	6,500
Type 2	25,000	28,100	3,100	20,000	22,500	2,500
Type 3	30,000	28,100	(1,900)	24,000	22,500	(1,500)

The marginal costs for WorkSafe are:

- Fee and levy counterfactual options – there would be little immediate impact in the short term but as the accumulated 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 Major Hazard Facilities 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.
- Fee and levy options 2 – WorkSafe would need to make invoicing changes with new levy rates, with the complexity of these changes depending on the final option chosen. There is slightly greater administrative burden in returning the surplus over a longer period of time, while conversely returning all the surplus in the first year may mean administrative costs for WorkSafe are higher than revenue in that year.
- Fee and levy options 3 – 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.

We are interested in your views on the marginal benefits of these options. Some preliminary thoughts are:

- For fee and levy payers, a very large discount in the levy received earlier on may be more beneficial in the short term, but may be counterbalanced by a higher jump to the new full cost recovery levy sooner than the options with a longer timeframe to return the surplus.
- There will be marginal benefits to society where the options better support the safety outcomes sought by the MHF 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 MHF workers and their families, and communities living or working close to facilities.

We are interested in your views on any likely behavioural changes that these options might influence, for example are any of the changes proposed substantial enough that they might:

- 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?

## Risks

The potential risks of these options generally are outlined in Table 24 below.

**Table 24: Potential risks of options for resetting MHF fees and levies**

Risk	Mitigation
Depending on the option chosen and the size of the change in charges for operators, how well the changes are communicated, and the lead time involved, the changes could leave operators with levy/fee	Consult and seek feedback on impact of options on operators.

Risk	Mitigation
increases that are difficult to manage.	
Some smaller operators who have exited from the regime in the last five years, due to reducing hazardous substances below the threshold for the MHF Regulations, will not receive the benefits of the discounted rates returning the surplus from over-collection.	There is little direct mitigation for this risk as there is no ability to directly refund over-collection of levy payments. However, these operators, while below the threshold for the MHF Regulations, will still benefit from receiving extra support and attention from WorkSafe given the risks of the hazardous substances on site.
The sustainability/durability of the MHF fee and levy scheme is undermined by incorrect charging (either over- or under-charging).	Consult operators to seek feedback on options
Levies and/or fees are incorrectly priced, compromising the quality of the regulator's oversight and safety outcomes for the MHF Regulations.	Review the levy and fees in a timely manner to ensure rates and revenue remain aligned with expected costs.
As the levy rate is calculated based on expected costs over the next five years, the expected levy revenue may diverge from expected costs after year 6, depending on variability in future costs.	
Turnover and difficulty in recruiting staff mean lower expenditure and surpluses building up again over time.	Salary for Specialist Inspector roles is set at a rate that is competitive with industry and is reviewed annually to support recruitment. Staff engagement is a priority, supported by WorkSafe's flexible working policy, wellbeing initiatives, training and professional development.

## Questions about the impacts of the options

**Question 15:** If these options were implemented, what impact would it have on you or your organisation?

**Question 16:** What impacts are not included here? Who might be affected that isn't covered here?

**Question 17:** What are your views on the marginal costs and benefits of these options?

**Question 18:** What risks do you see associated with the options?

## Addressing the problem and meeting the policy objectives

We consider that Option 2 for both fees and levies is most likely to best address the problems outlined and meet the policy objectives. We are interested in your views on which of the sub-options under Option 2 for the levies are preferable and why.

We are keen to know your views of the options outlined above, and what you think their costs and benefits will be, to inform the advice to Ministers on any changes to the fees and levies.

# Implementation, monitoring and review

## Implementation

To implement any of the options in this paper that are a change from the status quo, we need to amend the MHF Regulations.

We anticipate that any amendments to the MHF Regulations to change fee and levy rates would happen within the first half of the 2022/23 financial year (July-June). 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). Actual collection of fees and levies will depend on when services are provided:

- 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.
- 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.
- 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.

## Questions about implementation

**Question 19:** Do you agree with the intended timing of any new fees and levies? If not, when do you think the changes should be introduced?

**Question 20:** Are there any other implementation issues we should consider? If so, please explain.

## Monitoring and review

Regardless of the options implemented as a result of this review, including the status quo, monitoring and review of the MHF fees and levies will continue.

WorkSafe reports on the balances of the memorandum accounts in its annual report. It also reports on its outputs and performance for the MHF Regulations in the WorkSafe annual report and the Petroleum, Geothermal and Major Hazard Facilities Annual Report.

In addition, WorkSafe sponsors an industry-led annual MHF forum for operators, with the next one scheduled for March 2022, where it presents on relevant topics selected by industry, for example trends and learnings from notifiable incidents and observations from inspections.

WorkSafe will continue to monitor the activities and costs of providing the MHF regulatory services by tier and type of facility, which provided the detailed data used in this review.

We propose to review the MHF fee and levy rates again in five years. This review has allowed for a more detailed costing model than was possible when the MHF Regulations were first set up in 2016, so we expect the levy and fees set as a result of this process to be more aligned with future activity and expenditure, meaning the memorandum accounts will move towards a zero balance. The environment has been quite stable with low turnover in the number of facilities, which we expect to continue in the immediate future/medium term.

Things that would prompt an earlier review of the MHF fee and levy rates include:

- If the memorandum account balances do not move toward zero over time, as a result of revenue and expenditure not aligning due to conditions being other than anticipated.
- Feedback via the MHF forum or other avenues that indicate that fee or levy revenue or expenditure should be revised.

MBIE also has a review of the full MHF regulations on its future policy work programme, with the 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.

For any reviews that propose regulatory changes, all affected parties must be consulted about the proposed changes and their impacts.

## **Questions about monitoring and review**

**Question 21:** Do you agree with the proposed monitoring arrangements? If not, how should these changes be monitored?

**Question 22:** Do you agree with the proposed five-year review period for the fee and levy rates? If not, when should the next review take place and why?

## **Final question**

**Question 23:** Is there anything else that MBIE and WorkSafe should consider when providing advice to Ministers about resetting the fee and levy rates to recover the costs of WorkSafe's MHF regulatory activity?

## **Next steps and timing**

The feedback you provide in this consultation will help us develop advice for Ministers on what changes should be made to the MHF fee and levy rates.

We anticipate that any amendments to change the fee and levy rates in the MHF Regulations would happen within the first half of the 2022/23 financial year (July-June). Actual changes in the collection of fees and levies will depend on when the services are provided and invoiced.



## Annex 1: Setting the MHF fees and levies in 2016

The MHF fees and levies recover the following WorkSafe MHF regulatory activity, as estimated in 2016 when these were first set.

### Upper Tier Major Hazard Facilities

An upper tier facility will have a number of interactions with WorkSafe:

1. Safety cases – 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 of the major hazard facility has engaged with workers, and is compliant with the regulations. It often involves extensive engagement with the facilities themselves. The assessment of new and revised safety cases was estimated to require significant effort (between 25 and 60 person days' work) between administration, inspector time, and peer review, with oversight and sign-off from the Deputy Chief Inspector (DCI). 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).
2. Designation into regime – specific regulatory role that involves reviewing designation notifications to ensure that the information provided with the notification is correct and to allow WorkSafe to determine if the facility is an upper or lower tier facility or neither. This was estimated to involve 2.25 person days' work relating to administration, inspector time, peer review and sign-off by the DCI. All upper and lower tier facilities are required to go through this process initially.
3. Regulator 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:
  - a. Proactive inspections (ie, monitoring activity and support) – this requires preparation and planning before one or two inspectors visit the facility for 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. After this, there may be follow-up activities, including compliance activities. It was estimated that on average, a three-day inspection with two inspectors requires 19 person days, a two-day inspection with two inspectors requires 10 person days, and a one-day inspection with one inspector requires nine person days.
  - b. Processing notifiable incident reports relating to major hazard facilities – these were estimated to require 1.5 person days to process between administration, inspector time, peer review and sign-off. For the purposes of determining the costs of the regime it is assumed that on average a facility will have three notifiable incidents every two years, and
  - c. Reactive inspections – these require preparation and planning before two inspectors visit the facility, estimated at one day on average. 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. For the purposes of determining the costs of the regime it was estimated that on average a facility will have one reactive inspection every six years.

Over a five-year cycle, it was estimated that upper tier facilities can expect two in-depth proactive inspections and three one-day inspections.

### **Lower Tier Major Hazard Facilities**

A lower tier facility will have the following interactions with WorkSafe:

1. Designation into regime – specific regulatory role, which is the same as for upper tier, and all upper and lower tier facilities were expected to go through this process initially.
2. Regulator oversight activity – for lower tier this involves:
  - a. Proactive inspections (ie, monitoring activity and support) – this involves the same type of activity as for upper tier, and can be either one-day with one inspector or two-day more in-depth inspections with two inspectors. On the in-depth visit the inspectors will engage with duty holders and provide information around the regulations and monitor compliance with the major hazard facilities regulatory requirements for lower tier facilities. The inspectors then prepare their report and engage with the duty holder on the findings. After this, there may be follow-up activities, including compliance activities. It was estimated that a two-day inspection with two inspectors required 10 person days, and a one-day inspection with one inspector required nine person days. Lower tier facilities could expect two one-day inspections over a five-year cycle, and one two-day inspection every 10 years. Some were expected to require additional visits, making the total expected frequency almost three proactive inspections over a five-year cycle, and
  - b. Reactive inspections - the same activities as for upper tier equally apply for lower tier facilities.

While the label “lower tier” may suggest a lower level of activity than upper tier, the experience in other jurisdictions was that proactive inspections usually take longer and that lower tier operators still require significant support from the Regulator. The proportion of time proposed to be spent on average for each lower tier operation compared with upper tier operations reflected overseas experience.

The costs also included attributable overheads associated with providing services specific to major hazard facilities. These included the attributable portions relevant to the additional services of: travel, ICT, sector-specific training, property, consultancy support and motor vehicle costs. These were apportioned to activities based on the position of staff involved and the number of hours required for each activity, rather than having a fixed overhead per activity.

### **WorkSafe activity that is cost recovered from the Health and Safety at Work levy**

Regulator activities by the MHF team that were attributable to the Health and Safety at Work levy included:

- recruitment and other personnel costs
- WorkSafe support costs
- operational policy
- guidance and Standards
- international engagement
- coordination with other regulators and agencies

- engagement visits - once per year with management
- non-regime-related compliance and enforcement activity, such as onsite conventional health and safety matters detected during visits by specialist inspectors
- office of the General Manager, High Hazard Unit and Energy Safety
- notifications received under the major hazard facilities lower tier threshold but not in the regime
- staff training and team meetings that are non-attributable to the major hazard facilities levy.

## Annex 2: Major Hazard Facilities cost assumptions 2021

### Number of facilities

Estimated Facilities	2016	2022/23 onwards (average over 5 years)
Lower tier	60	69
Upper tier	80	55
<b>Total</b>	<b>140</b>	<b>124</b>

- The forecast number of facilities for 2022/23 onwards is based on the current number of facilities (in 2021) and assumes a small reduction to Lower Tier Type 1 facilities over the next five years.
- The original number of facilities estimated in 2016 was higher than the actual number of facilities over the last five years, highest number of facilities in any given year was 133 in total (2018/19 and 2019/20).

### FTE assumptions (number of employees and salaries)

- The forecast FTE headcount number of employees has remained the same (2016 vs. 2022/23 ongoing), however WorkSafe was not fully staffed for some of the 5 year period, which is reflected in the surpluses generated.
- The forecast salaries are based on the current average salaries, with a ~3% increase on average applied per year.
- 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.
  - Specialist Investigators: As the regime has progressed, dedicated investigators have been introduced to follow-up on high potential incidents.
  - 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

- The original overhead methodology and assumptions in 2016 have not changed. The attributable overheads are based on a proportionate allocation of ICT and property costs.
  - The overheads in the original 2016 assumptions estimated overheads to be ~\$0.480m in 22/23. Overheads for 22/23 and ongoing have been forecast to be ~\$0.650m per year, reflecting underlying support cost increases.
- Overheads are attributed to funding streams by including them in charge-out rates for time spent on each type of activity.

### Other costs

- Other related costs such as travel, consultancy, training etc. have been forecast based on a combination of historic trends and expected activity.
- Costs have increased from the average historic spend due to a full establishment of expected headcount. 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.

### **Site inspections**

- The forecast number of site inspection events is based on the Major Hazard Facilities team's intent for each Specialist Inspector to lead 7 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 1 site inspection per year. The remaining site inspections have been distributed evenly amongst the lower tier facilities.
- The forecast days per site inspection has been set out to be the following:
  - All lower Tiers = 14 days per site inspection
  - Upper Tier -Type 1 and Type 2 = ~ 17 days
  - Upper Tier -Type 3 = 21.5 days

### **Notifiable incidents**

- The forecast number of notifiable incidents is based on historical event data (slightly smoothed), but with an increase to Lower Tier Type 1 notifiable incidents.
- The forecast days for notifiable incident events matches the historical time sheet data and has been set at 2 days.
- The number of notifiable events is different between the designation categories. The forecast for volume of notifiable incidents per designation category is based on past results.

## **Major Hazard Facilities Safety case fee assumptions**

### **New safety cases**

- The forecast number of new safety case events has been assumed to be 1 per type within the 5-year period.
- 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**

- 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 5 years.
- The forecast number of days for a new safety case event matches the historical time sheet data of 20 days. (There have only been 2 revised safety cases assessed to date and both took 173 hours to assess, which rounds down to 20 days ).