

Briefing for the Incoming Minister for Workplace Relations and Safety

November 2023



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1. Welcome to the Workplace Relations and Safety portfolio

1. As the incoming Minister for Workplace Relations and Safety, you have a number of priorities focused on New Zealand's labour market regulatory environment. We have set out our understanding of your priorities in the table below. We would value an early opportunity to discuss their relative priority with you and to support you to develop a portfolio work programme.

Table 1: The Ministry of Business, Innovation and Employment's understanding of your immediate and longer-term priorities

100-day priorities	<p>Repeal the Fair Pay Agreements Act 2022 by Christmas 2023.</p> <p>Expand 90-day trials to apply to all businesses (the National Party 100-day plan includes a commitment to introduce legislation within this timeframe).</p>
Immediate cross-government priorities with implications for your portfolio	<p>Instruct public sector Chief Executives to begin reducing consultant and contractor expenditure, and to report on current spending within 100 days.</p> <p>Start reducing public sector expenditure by requiring Chief Executives to identify back-office spending not critical to frontline services.</p>
Other commitments	<p>Reform health and safety law and regulations.</p> <p>Consider simplifying personal grievances and in particular removing the eligibility for remedies if the employee is at fault, and setting an income threshold above which a personal grievance could not be pursued.</p> <p>Maintain the status quo that contractors who have explicitly signed up for a contracting arrangement can't challenge their employment status in the Employment Court.</p> <p>Commit to moderate increases to the minimum wage every year (New Zealand First Coalition Agreement).</p> <p>Commit to enforcement and action to ensure those found responsible for the abuse of migrant workers face appropriate consequences (New Zealand First Coalition Agreement).</p> <p>Ensure a 'National Interest Test' is undertaken before New Zealand accepts any agreements from the UN and its agencies that limit national decision-making and reconfirm New Zealand's domestic law holds primacy over any international agreements (New Zealand First Coalition Agreement).</p> <p>Modernise paid parental leave rules by giving parents more flexibility to share their leave entitlements (National Party manifesto).</p> <p>Review scaffolding rules to ensure they are fit for purpose (National Party construction policy).</p>

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2. The purpose of this briefing is to:
 - provide background information about the Workplace Relations and Safety portfolio (contained in Sections 2, 4 and 5 of this briefing)
 - help you implement your portfolio priorities, and identify further key areas for your consideration where the Ministry of Business, Innovation and Employment (MBIE) thinks policy settings within your portfolio could be improved, to lift the performance of regulatory systems and optimise their effect on labour market outcomes (Section 3 of this briefing).
3. We will provide further briefings to you as needed, focussing on specific topics in greater depth.

2. Portfolio overview

Purpose of this section

4. This section sets the scene for the Workplace Relations and Safety portfolio by outlining the regulatory systems you are responsible for, and the associated appropriations and MBIE staffing arrangements.
5. This is supplemented by Section 4 of this briefing, which provides:
 - a more detailed breakdown of the legislation, entities and appropriations that sit within these systems (with further information in Annexes 1, 2 and 4), and
 - information on the international-facing aspects of the Workplace Relations and Safety portfolio including trade agreements, and New Zealand’s role in the International Labour Organization (ILO) (with further information detailed in Annex 5).

As Minister you have responsibility for two regulatory systems

6. The Minister for Workplace Relations and Safety has responsibility for the **employment relations and employment standards (ERES) regulatory system**, and the **work health and safety regulatory system**. These regulatory systems are critical in supporting businesses to employ skilled and productive people, ensuring work is healthy and safe, building productive employment relationships and protecting minimum standards of employment.
7. Together, these regulatory systems set out the rules for labour market participation in New Zealand, by providing legal entitlements for workers and placing a range of duties and responsibilities on those who engage others to perform work for them, with reciprocal duties falling on workers. These rights and obligations are set out in a mixture of statute, regulations, and case law (particularly important in the ERES system).

Table 2: Key effects on regulated parties (not exhaustive)

	Employers	Employees	Unions
ERES	<ul style="list-style-type: none"> • Must comply with minimum employment standards (eg paying wages correctly, various types of paid leave) • Must participate in collective bargaining (if initiated by a union) 	<ul style="list-style-type: none"> • Receive the benefits of all employment law protections • Right to bargain collectively by joining a union (not compulsory) 	<ul style="list-style-type: none"> • Rights to represent union members and to access workplaces
	<ul style="list-style-type: none"> • Due process rules for offer and acceptance of employment, redundancy and dismissal 		
	<p>All bound by a duty of good faith, which requires parties to actively and constructively establish and maintain productive employment relationships</p>		

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Work health and safety	<p>PCBUs (persons conducting a business or undertaking)</p> <ul style="list-style-type: none"> Hold the primary duty of care to ensure the health and safety of workers and others so far as is reasonably practicable 	<p>Officers/directors</p> <ul style="list-style-type: none"> Must exercise due diligence that the PCBU complies with the duties in the Act 	<p>Workers, others in the workplace</p> <ul style="list-style-type: none"> Must take reasonable care for their own health and safety
	<p>Overlapping duties can arise, where people must work together to meet their duties</p>		

8. While both systems aim to achieve broad coverage across the labour market, each system’s scope of application is different. Work health and safety law applies in almost all situations and all working arrangements (including contractors and volunteers), with the primary duty of care borne by all “persons conducting a business or undertaking” (PCBU – this is most commonly a business entity rather than an individual). The ERES system, by contrast, usually only applies to employment relationships (including relationships between unions and other parties in some contexts). The ERES system applies to employees but generally excludes contractors and volunteers.
9. The work health and safety system’s broad coverage reflects the idea that all people are entitled to the highest possible protection from work-related harm, so far as is reasonably practicable. The ERES system’s more restrictive coverage reflects longstanding assumptions about bargaining power. The law recognises an inherent imbalance of bargaining power between the parties to an employment relationship (section 3 of the Employment Relations Act 2000) and provides a range of rights to mitigate this imbalance (protection) while also providing certainty for employers and employees and maintaining labour market flexibility.
10. Contractors, by contrast, are assumed to be operating a business on their own account, and to accept the benefits and risks of doing so. While this trade-off is acceptable where there is equal bargaining power, it causes issues where this is not the case. Addressing poor outcomes experienced by low-paid contractors, who fall outside the boundaries of the ERES system, is a longstanding policy challenge for labour market regulation in New Zealand.

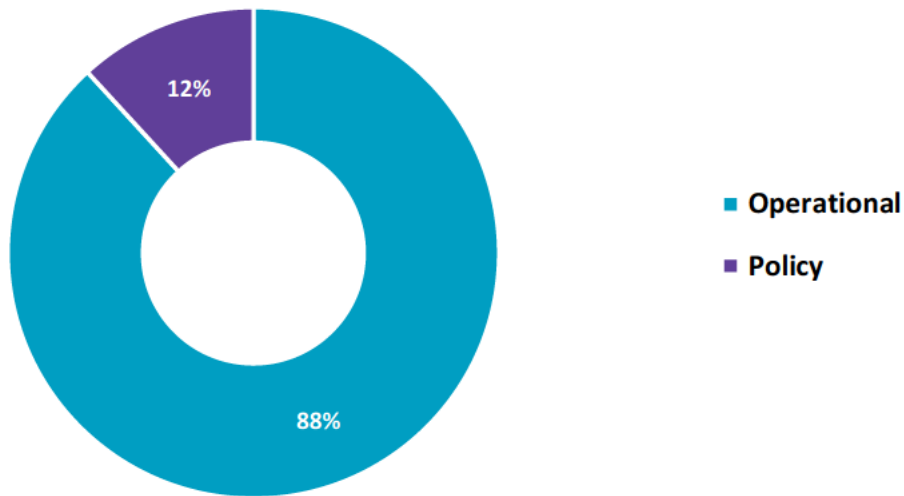
Departmental arrangements

11. Most of the policy and operational functions of the ERES system sit within MBIE. For the work health and safety regulatory system, MBIE has the policy function and WorkSafe New Zealand the operational functions, as the primary regulator for work health and safety.
12. The Workplace Relations and Safety portfolio falls within Vote Labour Market. For 2023/24, the appropriation for Vote Labour Market is \$3067.9m, of which \$225.6m is for the Workplace Relations and Safety portfolio. The portfolio appropriation is split between departmental funding (funding received by MBIE to provide services directly) of \$74.8m, and non-departmental funding (funding provided via MBIE to other agencies for them to provide services) of \$150.8m. Further details are provided in Annex 4. We are cognisant of the current fiscal environment, including the \$110 million Fiscal Sustainability Payment likely to be submitted to Treasury in November 2023. **Confidential advice to Government**

13. Within MBIE, the Workplace Relations and Safety portfolio consists of 332.7 FTE, which is 5.2% of the total MBIE workforce. The majority of these are operational staff including labour inspectors and employment mediators, as well as staff performing operational functions that serve a range of MBIE regulatory systems. Your main relationship with MBIE is conducted via the policy teams, who are responsible for providing you with policy advice on the regulatory regimes and broader workplace relations and safety issues. Detail on the functions MBIE performs is outlined in Section 5.

Portfolio by Policy/Operational Function

In the Workplace Relations and Safety portfolio, 88% is operational and 12% is policy. Enablement functions (corporate, ICT) have not been included.



Portfolio FTE by Function

Function	Portfolio FTE	Portfolio %
Operational	293.4	88%
Policy	39.3	12%
Total staff	332.7	100%

**The portfolio view does not include enablement functions (e.g. finance, legal, communications, ICT, Ministerial Services)*

Note:

All numbers are represented as FTE

Data is as at 30 September 2023

Overview of the employment relations and employment standards (ERES) regulatory system

14. The ERES system focuses on the way in which employers and employees relate to one another, how breakdowns in this relationship are resolved and how compliance with employment standards is achieved.
15. MBIE is the primary regulator of the ERES system. The Chief Executive of MBIE is required by the Employment Relations Act to perform a range of regulatory functions, including:
 - providing information and advice about employment relationships
 - promoting the effective resolution of employment relationship problems by providing problem and dispute resolution services
 - publishing information, reports, and guidelines about employment relationships
 - publishing comments about employment relationship matters
 - maintaining a strategy for promoting compliance with, and enforcement of, employment standards legislation.
16. MBIE performs most of its operational functions through MBIE's Te Whakatairanga Service Delivery Group. Depending on the service provided or function being exercised, the regulator is known externally as Employment New Zealand, Employment Mediation Services or the Labour Inspectorate. The main functions that MBIE delivers are:
 - a. **Information and education services**, through MBIE's Service Centre (ie call centre), digital channels, and in person activities. In the 22/23 financial year, the Service Centre responded to 49,493 calls and 2,549 emails about employment, including 731 calls to the dedicated migrant exploitation reporting line.
 - b. **Dispute resolution services for employment relationships**, such as mediation, early resolution and bargaining support. In 22/23, MBIE delivered 4,840 mediations, 1,808 instances of early resolution, and certified 9,649 private records of settlement.
 - c. **Compliance and enforcement of minimum employment standards**, through the Labour Inspectorate. In 22/23, the Labour Inspectorate made over 3,174 employment standards interventions. This included 229 investigations into the most serious breaches of employment law resulting in enforcement action, of which 104 involved migrant exploitation. As a result of Labour Inspectorate activities, the Employment Relations Authority and Employment Court awarded over \$2.1 million in penalties for breaches of minimum employment standards in 22/23.
 - d. **Statutory decision-making**, including registering unions, receiving collective agreements and notices of industrial disputes, and making assessments and decisions relating to Fair Pay Agreements.
 - e. **Administrative functions relating to the Employment Relations Authority**, including support services for the Authority's operations, and advice to you as the Minister responsible for appointments to the Authority.

- f. **Assistance to other regulators of work**, including Immigration New Zealand in managing the Recognised Seasonal Employer (RSE) scheme, with the Labour Inspectorate delivering 1,451 checks and audits of RSE employers in 22/23.

17. MBIE is delivering more activities than at the same time in 2022/23, reflecting significant growth in demand across the ERES system. For example, in the entire 22/23 financial year, MBIE received 933 complaints of migrant exploitation, compared to 1,247 complaints in the first five months of the 23/24 financial year (ie 1 July to 30 October 2023).

18. The Employment Relations Act also provides for the following statutory institutions in the ERES system:

Institution	Role
Employment Relations Authority	A quasi-judicial investigative body with the role of resolving employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case. MBIE provides administrative support for the Authority. Members are appointed by the Governor-General on your advice, supported by MBIE.
Employment Court	A specialist court of record, with exclusive jurisdiction and corresponding powers to deal with a range of employment related matters. The Employment Court is serviced by the Ministry of Justice. Members are appointed by the Governor-General on the advice of the Attorney-General.

Overview of the work health and safety regulatory system

- 19. The work health and safety regulatory system aims to secure the health and safety of workers and workplaces. The Health and Safety at Work Act 2015 (the HSW Act) requires businesses to ensure the health and safety of their workers and others affected by the work of the business, so far as is reasonably practicable.
- 20. This primary duty of care sits with the business; as it is responsible for creating the work-related risks, it is best placed to manage them. Businesses must involve their workers in managing work health and safety risks.
- 21. The HSW Act has performance-based general duties, which ensure broad coverage of New Zealand’s work and workplaces. The broad nature of these general duties mean that they do not quickly date, they support innovation, and they provide flexibility. The duties are underpinned by industry- and hazard-specific regulations; safe work instruments; Approved Codes of Practice; and guidance where further clarity is required.
- 22. The legislative framework was significantly modernised in 2015 with the HSW Act and an initial suite of underpinning regulations. Completing the modernisation of outdated regulations (and providing the supporting safe work instruments and Approved Codes of Practice) is needed to give effect to the Act. Leadership, strategy and coordination of the work health and safety system is driven by the *Health and Safety at Work Strategy 2018-2028*. The Strategy sets a clear direction and priorities for reducing the high rate of work-related harm in New Zealand, requiring government, workers and businesses working together to improve work health and safety outcomes. The Strategy has not yet been fully implemented.

23. WorkSafe is the primary work health and safety regulator. It leads the implementation of the work health and safety system, engages with sector and industry stakeholders, develops safe work instruments and Approved Codes of Practice, and provides information and guidance to duty holders. In the 2022/23 financial year WorkSafe undertook over 9,100 enforcement actions, ranging from directive letters to investigations and prosecutions.

24. WorkSafe also works closely with:

- the Civil Aviation Authority and Maritime New Zealand as the work health and safety regulators for the aviation and maritime sectors
- the New Zealand Police, particularly the Commercial Vehicle Safety Team, for on-road work health and safety
- the Accident Compensation Corporation in coordinating injury prevention activity
- the Environmental Protection Authority in the management of hazardous substances.

3. Strategic choices in the Workplace Relations and Safety portfolio

Purpose of this section

25. The incoming Coalition Government has stated a strong emphasis on lifting New Zealand's economic performance, including by taking steps to ensure our regulatory environment is responsive to business needs and fit for purpose. We look forward to supporting you to implement your first priorities in this ongoing work.
26. This section of the briefing describes the contribution that the Workplace Relations and Safety portfolio can make towards improving New Zealand's economic performance (particularly in conjunction with other labour market portfolios). It concludes by identifying areas where policy changes could be explored, after your immediate priorities have been implemented.

The economic context

27. As outlined in MBIE's separate briefing on the economic context, New Zealand's economy faces a number of long-term challenges. These include weak productivity, increasing stresses on our economic resilience, negative impacts on the natural environment, and significant disparities between different population groups. Compounding these, are global 'megatrends', such as changes in climate, technology, and demography, and rising geopolitical tensions. In the short-term, our economy also faces immediate headwinds. These challenges and trends present both risks and opportunities to the economy. MBIE can help you to work collaboratively across portfolios and with stakeholders, such as business and local communities, to achieve your immediate portfolio priorities and address these challenges.
28. Your portfolio supports these challenges both directly and in collaboration with other portfolios. **The closest links are with other labour market portfolios** (Immigration, Education, Social Development and Employment, and Accident Compensation). While New Zealand's labour market has performed well in terms of job creation and absorbing large shifts in the workforce (such as the shift to higher skilled occupations, increases in women's labour force participation, and fluctuations in net migration), there remain long-standing challenges such as low labour productivity, high rates of work-related harm, high recorded skill mismatches and poor participation and outcomes for some population groups.
29. Coordinating action across the labour market portfolios will enhance the effectiveness of interventions to:
- improve labour market productivity
 - reduce disparity between the participation and outcomes of different population groups
 - ensure the right settings in the labour market regulatory systems so they are fit-for-purpose and supporting business performance
 - identify the support needed for labour market transitions resulting from shifts in the economy.

30. Given the interdependencies and synergies between portfolios at both the ministerial and agency level, there is a strong case for setting up governance arrangements to ensure co-ordination. We can discuss options for this governance with you.

Workplace Relations and Safety settings provide the framework for work

31. The Workplace Relations and Safety portfolio has regulatory tools that influence labour use, wage setting, and labour productivity. The nature of this portfolio's contribution to broader labour market or economic goals is facilitative rather than direct – setting the regulatory framework within which firms' and workers' different interests are translated into productive working relationships. Regulatory systems, including trusted institutions, ensure that minimum employment standards are met, and workers are not harmed at work.
32. This section of the briefing contains MBE's advice on opportunities for improving the contribution of Workplace Relations and Safety interventions in meeting the labour market challenges and opportunities identified above. This requires effective regulatory stewardship, to ensure that regulatory settings strike an appropriate balance between flexibility, worker protection, and certainty for parties.

Ensuring the ERES and work health and safety systems remain fit for purpose

33. To support business performance, regulatory systems require constant improvement to stay current, adapting to Government priorities, changes to technology and business practices, and lessons learned and feedback from stakeholders. For labour market regulation, this means continually testing and adapting for:
- “Future of work” trends, such as the increasing reach of work mediated by online platforms, and how these are influencing people's work choices and outcomes.
 - How principles-based rules are interpreted and applied by regulated parties and judicial institutions.
 - Overall system performance, to reduce the risk of regulatory failure, remove unnecessary compliance costs, and improve effectiveness.
34. Regulatory maintenance also involves testing whether our regulatory systems continue to strike an appropriate balance between core regulatory objectives. For Workplace Relations and Safety interventions, these are: **flexibility, worker protection, and certainty** for regulated parties:
- **Flexibility** has two main meanings in the context of labour market regulation:
 - i. **Labour market flexibility** means the extent to which firms can adjust their use of labour in response to changed circumstances. Unduly rigid settings (eg restrictions on hiring and firing and/or on permissible hours of work) limit the market's capacity to adjust to shocks and to allocate labour to its most productive use. This type of flexibility can be in tension with *worker protection*.
 - ii. **Flexible regulatory design** means principles- or performance-based regulation, rather than prescriptive or rules-based regulation, so that regulated entities have scope to adopt a range of approaches to meet their legal obligations. This type of

flexibility can be in tension with the objective of providing *certainty* to regulated parties.

- **Worker protection** means regulations that provide “bottom lines” for acceptable conduct or outcomes, to promote a desirable social purpose. These are designed to limit the effect of unequal bargaining power, ensuring that firms cannot dictate terms and the costs implicit in “flexible” labour market settings are not borne disproportionately by workers. Worker protections are sometimes understood as inherently rigid (in opposition with the first meaning of “flexibility” given above) but can also be implemented in a flexible way, via principles-based regulation. For example, the Health and Safety at Work Act 2015 aims to provide strong worker protection via flexible, principles-based legislation.
- **Certainty** means that regulated parties should know exactly what their legal obligations are, so that they can interact and invest with confidence.

35. There is no simple formula that dictates where the balance should fall in any given case.

Individual policy interventions often have impacts across multiple objectives (for example, the minimum wage provides protection by way of a minimum pay rate for work, and it also provides employers and employees with certainty), and the effectiveness of policy interventions will change over time in response to changing circumstances.

36. Nor are the links between these objectives and New Zealand’s long-term challenges (eg productivity) straightforward. While flexible labour markets are associated with productivity in economic literature, it is not necessarily the case that maximising flexibility for firms, at the expense of other objectives, would translate to higher productivity growth. Emphasising balance, rather than any one objective on its own, is important in the labour market context that concerns human relationships rather than “arm’s length” transactions.

Where does the balance of objectives currently fall?

37. Below we have provided some general observations about the current state of our regulatory systems, in relation to the objectives described in paragraph 34.

Labour market flexibility vs worker protection

38. While New Zealand has a relatively comprehensive set of worker protection legislation, the overall balance of our settings is consistent with the objective of a flexible labour market. The changes implemented over the last five years to provide greater protections in some contexts have not fundamentally shifted this balance. The enactment of the Fair Pay Agreements system represents the biggest potential shift in this continuum. The extent of the impact will depend on the outcome of sector- or occupation-specific bargaining (if/when agreements are concluded). Absent this policy, other recent moves towards “worker protection” are more modest.

39. This overall assessment reflects that in aggregate worker protections are not set at a level, or in such a way, as to significantly reduce overall labour market flexibility. For example, there are no significant regulatory constraints on working time, meaning that parties are generally free to agree arrangements that reflect personal preferences and market conditions. New Zealand’s

settings for “hiring and firing” were singled out as the most flexible in the OECD in 2017¹: no significant changes to those settings have been made in the intervening years (although relevant policy work has occurred during consideration of a New Zealand income insurance scheme).

40. Employers have noted that the relatively high minimum wage (compared to the median wage) resulting from recent minimum wage increases has reduced their ability to offer wage premiums to reflect skills and experience, leading to wage compression at the low-to-middle end of the wage distribution.
41. The effects of the legislative framework for bargaining pay equity settlements have so far been felt primarily within the public sector. Other recent changes, such as the increase in the minimum sick leave entitlement, represent marginal tweaks to long-established rules, rather than structural shifts.

Flexibility in regulatory design vs certainty

42. Examples of principles-based regulation include the duty of good faith and the “reasonable employer” standard against which an employer’s actions are measured when assessing whether actions were justifiable; and the design of the work health and safety system, which requires PCBUs to do what is “reasonably practicable” in their particular circumstances. Principles-based rules are deliberately used to ensure that systems are durable and can adapt over time to changing circumstances. Both systems proved able to “flex” in this way throughout the unique situations that COVID-19 created for regulated parties, without making changes to the fundamental legislation.
43. However, the other side of this coin can be a lack of certainty for regulated parties, which can reduce parties’ confidence when making decisions (eg investment decisions or decisions about how to structure a business). Guidance on best practice regulation emphasises that when principles-based rules are used in primary legislation, regulatory systems should nevertheless provide greater predictability and certainty over time. This can be achieved through a combination of legal precedents (case law), secondary legislation (regulations), authoritative advice and guidance, and regulatory “safe harbours” where appropriate.
44. In the case of the ERES and work health and safety regulatory systems, there is some cause for concern that this gradual move towards greater certainty is not occurring to the extent that is desirable. Instead, there has been no consistent trajectory, and in some cases there has been a reduction in certainty over time.
45. In employment law, recent case law under section 6 of the Employment Relations Act (“meaning of employee”) has found employment relationships to exist in contexts where this was previously thought to be unlikely (including Uber drivers – despite the Employment Court having previously held that an Uber driver was not an employee). Similarly, some cases challenging employers’ conduct in the context of COVID-19 (eg workplace changes, minimum wage) produced results that highlighted the “intensely fact-specific” nature of employment law

¹ *Back to Work – New Zealand: Improving the Re-employment Prospects of Displaced Workers* (OECD 2017).

obligations, leading to an impression that employment law is easy to get wrong when conduct is assessed retrospectively, but difficult to state in advance.

46. In work health and safety, progress towards implementing the regulations that provide more certainty about PCBU's obligations has been slow. Case law and guidance cannot adequately fill this gap.
47. The current state, and the lack of a clear trajectory towards greater certainty, suggests that opportunities for providing greater certainty for regulated parties should be explored as a priority. Within the ERES system, this could include using more prescriptive rules in contexts where these would make more sense than statements of principle (eg to provide greater certainty about what the "minimum standard" means in particular contexts), and exploring areas where more weight could be placed on the terms that parties agree to, where workers can be assumed to have high bargaining power (eg highly paid employees). These points are explored in more detail below (paragraphs 70 - 85).

Each regulatory system faces challenges

The ERES system

48. A number of legislative changes have been made to the ERES system over the last five years, including some that have introduced new processes and functions in the system (for example, Fair Pay Agreements, the Screen Industry Workers Act 2022, and the Equal Pay Amendment Act in 2020).
49. While developing and implementing these changes, and responding to the extraordinary circumstances created by COVID-19, demand for employment services has remained high and is growing. Forecast economic conditions mean likely additional pressure on employment relationships – and demand for employment relations services as a result – is on the horizon. A fully committed policy work programme has meant a focus on delivery with little to no space for regulatory stewardship and system strategy.
50. The challenges and risks facing the ERES system include:
 - Ongoing high demand in the system and issues with delivering timely and early employment dispute resolution. In the short term, resources are needed to meet the demand for dispute resolution services but in the long term it will be necessary to address the drivers of that demand – which will involve examining policy, operational and institutional settings. The Holidays Act 2003 and the Parental Leave and Employment Protection Act 1987 are significant drivers of demand that could be significantly reduced by better legislation.
 - A range of new regulatory requirements, compounding existing complexity and low levels of understanding of employment law among regulated parties.
 - Delivering a growing range of regulatory functions, including some that are novel to the ERES system and in New Zealand.
 - A need to better understand and evaluate how the ERES system is functioning and using that knowledge to inform both policy settings and regulatory strategy.

The work health and safety system

51. The performance of the work health and safety system is mixed. While there have been significant improvements to the system since the Pike River Coal Mine tragedy, there is more to do to improve and sustain performance. All participants in the system (Government, businesses and workers) have key roles to play in this improvement, both individually and as part of a collective.
52. Challenges facing the health and safety at work regulatory system include:
- An outdated and incomplete regulatory framework that does not provide the necessary protection from harm to workers across different risks and industries, while being increasingly difficult in places for businesses to comply with and WorkSafe to effectively enforce. The modernisation of the regulatory framework needs to be completed. Outdated regulations for plant (ie machinery and equipment) and structures, and working at heights (including requirements for scaffolding) cover risks that together account for almost 80 percent of New Zealand’s work-related deaths. Regulations for hazardous substances that manage a significant range of acute, health and catastrophic risks are large and complex making them difficult to understand and apply, especially for small businesses.
 - New Zealand’s work-related death rates continuing to track at twice that of Australia and four times that of the United Kingdom. Progress to reduce work-related deaths and serious injuries has stalled. Furthermore, a worker is 15 times more likely to die from a work-related disease than a workplace injury.
 - A need for more effective governance of the work health and safety regulatory system, including a shared understanding of desired system outcomes, and effective monitoring of system performance. The *Health and Safety at Work Strategy 2018-2028* needs to be implemented, with sector and business leaders, workers, their representatives and unions all having a key role in lifting the performance of the health and safety system.
 - System outcomes are inequitable, with some population groups disproportionately represented in work-related injury, illness and fatality statistics.
53. In addition to these challenges, **WorkSafe’s performance is of particular concern at present:**
- It has traditionally struggled to clearly articulate the cost and effectiveness of its activities.² As a result, we cannot assess how decisions about priorities for allocating resources will contribute to ensuring work health and safety, or have confidence in WorkSafe’s ability to justify requests for additional resources.
 - In recent years WorkSafe funded growth, in FTEs and activity, through the use of underspends and other reserves. However, this was not sustainable and for the 2023/24 financial year WorkSafe’s forecast operating budget exceeded its available funding by approximately \$17.8m.

² This was a key finding of the 2022 Strategic Baseline Review of WorkSafe.

54. To address these challenges WorkSafe has:

- committed to implementing the recommendations of the Strategic Baseline Review. These will enable it to better articulate its regulatory strategy and measure, monitor, and value its activities
- started a process to right-size the organisation to ensure it operates within its funding envelope and optimise its resources across the range of interventions at its disposal
- a new Chief Executive (Steve Haszard) has been appointed for an 18-month period to guide WorkSafe through this process.

55. MBIE is working closely with WorkSafe on these activities and has increased WorkSafe's monitoring status from "On watch" to "Intensive monitoring". This is reflected in additional reporting by, and oversight of, the organisation. MBIE has appointed a Crown Observer to provide oversight and an additional level of assurance to MBIE in its role as Crown monitor.

56. We will brief you further on WorkSafe's performance in the coming weeks.

Your portfolio opportunities to improve labour market outcomes

57. You have stated a number of priorities for changes in this portfolio. We are ready to assist you to implement these and to advise the Government about any flow-on implications for the regulatory systems you are responsible for.

58. Alongside implementing your stated priorities, we have identified areas where we recommend policy work – either immediately, or as part of the mix of areas that could make up a balanced work programme in the medium-term.

59. The range of potential policy work exceeds the policy capacity available so prioritisation decisions will be needed when developing a work programme, and we are able to discuss these further with you. The portfolio work programme will contain projects from a number of different categories:

- **100-day plan commitments** will be the number one priority and we have prepared advice on repealing the Fair Pay Agreements system and extending the use of 90-day trials to all employers. Other Coalition Agreement and manifesto commitments can also be prioritised.
- **Non-discretionary work** such as the annual minimum wage review, responding to Official Information Act requests, parliamentary reports, and reports to the International Labour Organization.
- **Current projects underway.** There is an opportunity to review these projects to assess whether you wish to continue them, and if so, whether their current direction and timing align with your priorities. We can provide advice on these projects.
- **Other high priority work.** It would be good to discuss the prioritisation of other projects that can be undertaken if there is policy capacity so that we can plan resourcing and preparatory work.
- **Unplanned work.** As with any regulatory policy area, there are a range of unexpected events that can require policy work such as clarification of the law if legal precedents are inconsistent with the policy intent, supporting other agencies with questions that affect the

regulatory system, and emergencies such as the 2019 Christchurch mosque attacks and the Whakaari/White Island eruption. If such projects arise, reprioritisation becomes necessary.

60. Your portfolio work programme will contain elements from each of these categories. We look forward to discussing with you how you would like to structure and prioritise these.
61. As well as the “big ticket” items below, MBIE uses Regulatory Systems Amendment Bills to make small, regular improvements to the legislation it administers. There were Regulatory Systems Amendment Bills on the legislative programme of the previous Government that contain provisions relating to your portfolio. We will brief you on the relevant changes at the appropriate time, as these will require your support to progress.

Two key areas require immediate attention to improve certainty and worker protection

62. There are two critical pieces of legislative work required to ensure that we maintain the core regulatory foundations of the systems. This work is essential to ensure that workers and businesses have certainty and for maintaining the minimum floor of protections. We recommend that reforming the Holidays Act 2003 and completing the modernisation of the work health and safety regulatory system be accorded a high level of priority in your future work programme, for reasons explained below.

Work is underway on a Bill to make compliance with the Holidays Act 2003 easier

63. In 2020 the previous Government endorsed 22 recommendations for improvements to the Holidays Act made by the tripartite Holidays Act Taskforce that it had established in 2018. Drafting of a Bill to implement these recommendations is underway (reflecting the outcome of a detailed policy design process with payroll providers and practitioners, and refinements agreed by the previous Minister). We recommend progressing work to improve the Holidays Act, noting there are some choices for you in deciding next steps. We will provide you with advice on these choices in the coming weeks.
64. It has been well known since at least 2014 that there are significant issues with the Holidays Act that make it difficult to implement in practice. These include complex requirements and a lack of clear processes and clearly defined calculations, particularly in how entitlements should be provided and how they are to be paid. While the Act was designed to accommodate an increased diversity in working patterns by providing flexibility for employers and employees to agree how minimum leave entitlements are provided, the result in practice is a lack of certainty that the minimum requirements have been met.
65. These challenges with the Act itself, combined with payroll systems that are not fit for purpose and poor business processes, have contributed to widespread (often unintentional) non-compliance with the Act. This has resulted in large-scale remediation payments across both the public and private sectors, running into billions of dollars. Addressing these challenges will have a positive impact for businesses, though we note that the solution currently proposed will also involve costs for business.

Modernising work health and safety regulations to improve certainty

66. We acknowledge your commitment to reforming health and safety law and regulations. This is an area where an outdated and incomplete regulatory system is creating uncertainties and inefficiencies for businesses and the regulator, in areas of risk that significantly contribute to

ongoing work-related harm. The primary legislation and initial underpinning regulations were reformed in 2015 following the Pike River Coal Mine tragedy, with the intention of modernising the remaining regulations next.

67. The HSW Act is performance based – it specifies an outcome (ensuring the health and safety of workers and others affected by the conduct of the work) but not how a business must achieve this. This is the role of regulations, which provide more certainty on how the business can comply with the primary duty of the Act in their specific situations.
68. The lack of regulations for some circumstances, and the continued reliance on outdated regulations (some dating from the 1970s), is creating unnecessary costs to businesses and the regulator. There are several major sets of outdated regulations that remain and need attention. Drafting of modernised plant and structures and working at heights (including scaffolding) regulations are well progressed, informed by substantial stakeholder consultation and engagement. Our next priority is hazardous substances regulations, given their size, complexity and potential for catastrophic failure and harm. We would like to discuss with you how to best progress both of these streams of work concurrently to ensure the right regulatory settings, rather than planning to undertake the work consecutively as we have done in the past.

Current projects where there are choices about how to progress

69. In addition to the two projects above, the other main projects that are in train are pay gap reporting legislation, modern slavery and worker exploitation legislation, and health and safety work on refrigerants, silicosis, and hydrogen. You have choices about the prioritisation and timing of these projects. These choices will help determine the available policy capacity for other work. More information about these projects is given in Tables 7 and 8 (in Section 6 below) and we can provide further advice.

Other policy settings may not strike the right balance between flexibility, worker protection, and certainty

70. In our view, for a range of reasons, the matters referred to below warrant consideration as part of the discretionary component of your work programme. Your other priorities and the non-discretionary elements of the work programme will mean it will not be possible to pursue all of these immediately or concurrently. Prioritisation will be required, and we look forward to discussing the structure of the work programme with you.

Paid parental leave

71. There is a **National Party manifesto commitment** to amend parental leave settings, so that parents can divide their paid leave between them in the way they think is best. We agree this is a desirable change, but the outdated structure of the legislation means significant restructuring would be needed to incorporate it. We recommend that this be done as a part of a full review of the Parental Leave and Employment Protection Act 1987. Since its introduction, there have been eight Amendment Acts. The Act has become longer and more complicated with each revision, and some changes created loopholes or contradictions that had to be addressed through further amendments (or that MBIE is currently working to address through Regulatory Systems Amendment Bills).

72. The Act was written in an era where lifestyles, families and gender expectations were different. This is reflected in the language and expectations set out in the Act. Flexible working and different family arrangements are not well catered for, and there is insufficient support for the modern dual parenting model that many aspire to, as the entitlements are primarily focused on ensuring that the biological mother can stop work. Needing to work within this legislative framework will make the amendments necessary to enable sharing of paid leave more complex. There are also many small issues with the Act that can result in inequities (usually stemming from the rigid requirements for receiving parental leave payments). We note that, despite these issues, the Act still serves its purpose for the vast majority of working parents and primary carers.

Certainty and protection gaps at the boundary of “employment” and other modes of work

73. We acknowledge the National-ACT Coalition Agreement includes a commitment to provide more certainty of contract in the context of the legal distinction between contracts for services and employment relationships.

74. Currently, the definition of an employee in section 6 of the Employment Relations Act determines the boundary of the ERES system. However, the legislative definition is minimal, and in practice judicial decisions about whether a particular working arrangement constitutes employment are based on the application of common law tests. The same or similar tests can be relevant across multiple “boundaries” (employee-contractor; employee-volunteer – including internships; and the distinction between “casual” and permanent/ongoing employment relationships).

75. The common law-based approach facilitates flexibility and choice in the labour market but has more ambivalent effects in relation to worker protection and party certainty, which are becoming more acute as the world of work and education is rapidly changing.

76. One key policy challenge is how best to mitigate situations where people are engaged as contractors (beyond the reach of employment protections) despite lacking bargaining power or understanding the rights and obligations involved. Case law on this topic (eg the Employment Court’s recent Uber decision)³ has created some uncertainty for firms and workers which stakeholders may prefer is resolved. Recently, the uncertain boundary between employment and non-employment-based internships (whether unpaid, or where the student is supported via a grant or stipend) has been highlighted as an issue that could influence employers’ willingness to offer training opportunities. In a different context, the lack of a statutory definition of “casual” employment (as opposed to permanent employment) in our system was highlighted during the height of COVID-19, where the lack of certainty contributed to some workers being deprived of benefits and rights to which they were likely entitled.

77. These aspects of the definition of an employee could be considered separately or together as part of a review of the definition contained in section 6.

³ E tū Inc & Anor v Raiser Operations BV & Ors (2022).

The dispute resolution system

78. There are serious concerns about the degree to which the dispute resolution system provides a low-cost, timely and accessible system. Overall, raising an employment relationship problem through the dispute resolution system takes a long time and requires a lot of individual effort and risk (eg financial and reputational costs).
79. We have heard concerns that at all stages, from the time an employment issue is raised, the process is more formal and adversarial than intended. This may impact employees' willingness to raise an issue. It can lead to people giving up and dropping out of the process before they reach a resolution, or accepting a settlement or outcome solely to avoid further litigation. It can also lead to employees raising issues at a much later stage, often at the point where ending the employment relationship is the only realistic response to the circumstances.
80. There have been some innovations in recent years, for example the introduction of the early resolution as part of the suite of dispute resolution services, but there is still pressure at each stage in the dispute resolution system. Previous governments have agreed that a review of the dispute resolution system should be on the Workplace Relations and Safety portfolio work programme, but it has not yet been started. A fulsome review is MBIE's preferred option, but that is a substantial programme of work. It may be possible to focus on some discrete issues, such as the regulation of non-lawyer employment advocates, but this would be a less efficient approach.

Settings around redundancy and dismissal

81. While our labour market settings are seen as enabling flexibility, there is a concern that the outcomes for many employees from restructuring situations can result in permanent income and productivity issues as a result of wage scarring. If predicted trends around increased transitions for workers resulting from technological and structural change occur, then improving the transition mechanisms could be productivity enhancing. MBIE will be providing advice to the Minister of Social Development and Employment about options for addressing issues related to income resilience. Some of the options, such as redundancy notice and payment settings, sit within the ERES system.
82. Within this portfolio, policy work could look at whether current employment law settings around redundancy strike the right balance between process and *outcome-related* protections. Currently there is cost involved in managing the *process* to make an employee redundant, and because there is no prescribed process, there is a risk of getting the process wrong (which can lead to costs if the process is challenged). There is no requirement to pay compensation if the *outcome* of the process is redundancy, unless contractually agreed between parties. There is a question as to whether the current trade-off between certainty and cost is correct, and if the certainty of a simple and defined redundancy process would justify the introduction of a minimum entitlement to redundancy compensation. Minimum notice periods could also be considered in this context.
83. We acknowledge the National-ACT Coalition Agreement includes a commitment to "consider simplifying personal grievances." In this context, we note that a number of stakeholders have questioned whether the same principles-based rules should apply equally to all employment relationships, particularly where parties have equally matched bargaining power. As you are

likely aware, in Australia there is an income threshold which prevents unfair dismissal actions for “high earners”. Free and frank opinions

Collective bargaining processes

- 84. Bargaining is the process used by unions and employers for negotiating collective employment agreements. The bargaining system has undergone significant reform in recent years, expanding from the Employment Relations Act to include the Fair Pay Agreements Act 2022, the Screen Industry Workers Act 2022, and the Equal Pay Act 1972 (which was amended in 2020 to establish a process for raising pay equity claims that aligns with the existing bargaining framework).
- 85. Bargaining is intended to enable employers and employees and their representatives to negotiate terms that are mutually beneficial and support constructive, productive industries and workplaces. However, several recent bargaining processes have been lengthy and significantly impacted actors beyond the bargaining parties, particularly in the public sector. A number of concerns have been raised with MBIE and there may be value in undertaking further policy work to ensure the bargaining system is establishing appropriate incentives for bargaining parties.

Free and frank opinions

4. Portfolio responsibilities

Overview

86. This section summarises the various responsibilities that flow from Ministerial ownership of the work health and safety and ERES regulatory systems (including legislation, institutions and operational agencies, appropriations within Vote Labour Market, and international responsibilities).

Legislative responsibilities

87. The Minister for Workplace Relations and Safety is responsible for the following key pieces of legislation (this is not an exhaustive list):

- Health and Safety at Work Act 2015
- Employment Relations Act 2000
- Fair Pay Agreements Act 2022
- Screen Industry Workers Act 2022
- employment standards legislation, including the Minimum Wage Act 1983 and the Holidays Act 2003
- Parental Leave and Employment Protection Act 1987
- Equal Pay Act 1972 (and 2020 Amendment Act)
- Remuneration Authority Act 1977.

88. Having responsibility for the Remuneration Authority Act 1977 means that the Minister for Workplace Relations and Safety leads any legislative proposals to amend that Act. Most recently, amendments have been required to give effect to Government decisions about MPs' pay.

89. More detail on the full set of legislative instruments you are responsible for can be found in Annex 1.

Crown entities

90. The Minister for Workplace Relations and Safety is responsible for WorkSafe New Zealand, a Crown agent. The role of the responsible Minister is defined in section 27 of the Crown Entities Act 2004 and is to oversee and manage the Crown's interests in, and relationship with, the entity. The role includes appointing board members, participating in setting strategic direction and performance expectations, and monitoring and reviewing performance.

91. Further information on WorkSafe is set out in Annex 2, and more detailed information about WorkSafe will be provided in its briefing to you.

Other institutions

92. The Minister for Workplace Relations and Safety is also responsible for:

- recommending appointments to the Employment Relations Authority and the Remuneration Authority to the Governor-General

- nominating public sector trustees for the Diversity Works New Zealand (legal name the Equal Employment Opportunities Trust)
- acting as chair and a trustee of the Industrial Relations Foundation.

93. Further information on relevant institutions is attached in Annex 2.

Key stakeholders

94. The Workplace Relations and Safety regulatory systems have an impact on and are of interest to a broad range of stakeholders. A list of key stakeholders is attached in Annex 3.

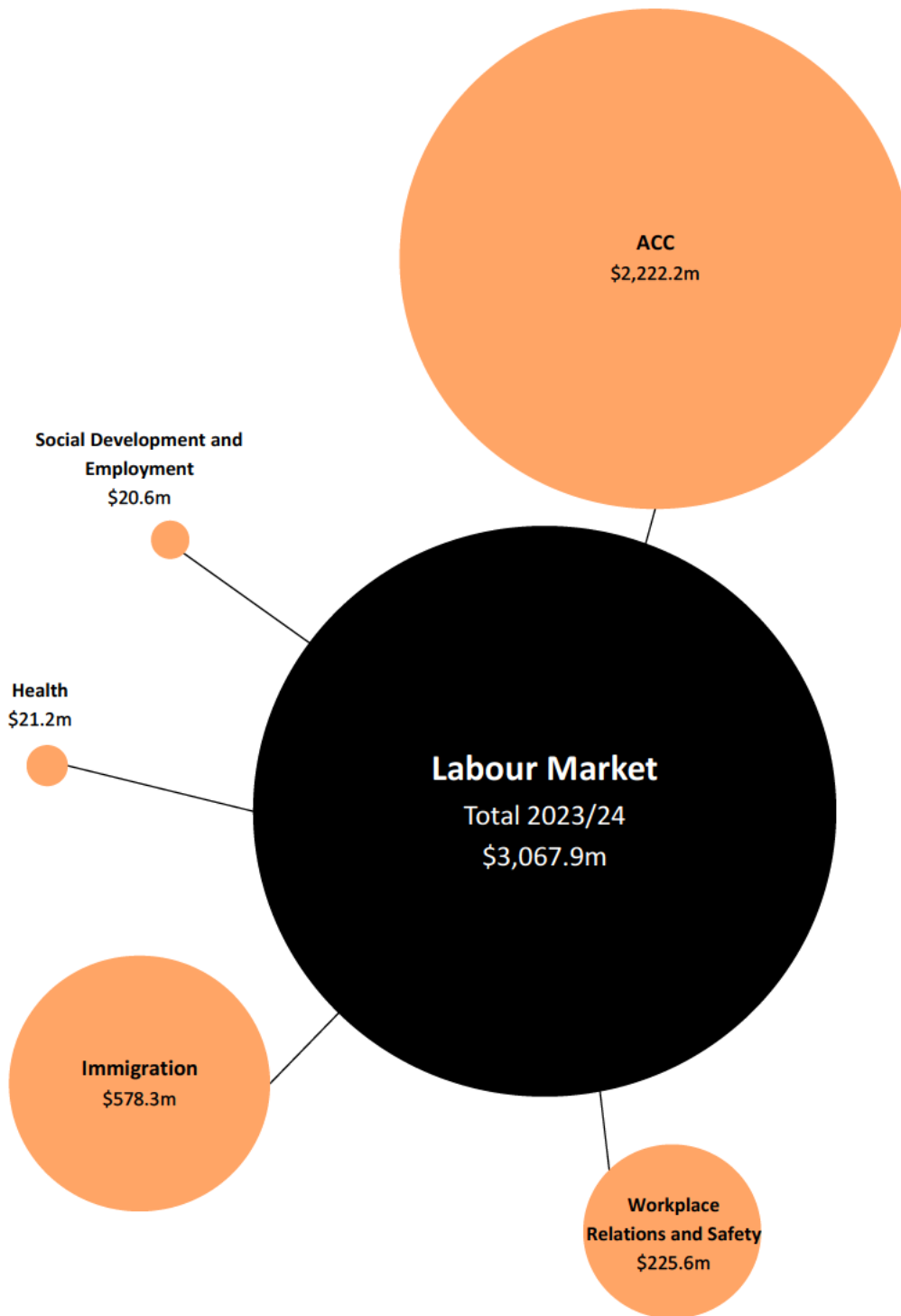
Vote Labour Market

95. You are responsible for appropriations that fall within Vote Labour Market totalling \$221m operating and \$4.6m capital in 2023/2024. The other appropriations within Vote Labour Market are the responsibilities of the:

- Minister for ACC
- Minister of Immigration
- Minister for Social Development and Employment
- Minister of Health.

96. The diagram below sets out the 2023/24 appropriations for Vote Labour Market following the October Baseline Update. Further information about departmental funds and appropriations, contestable funds and trusts, and the Health and Safety at Work Levy is provided in Annex 4.

Diagram: Vote Labour Market 2023/24 appropriation totals



International responsibilities

97. The international aspects of the Workplace Relations and Safety portfolio include:

- The relationship between New Zealand and the International Labour Organization (ILO).** The ILO is a United Nations agency of 187 member states, established in 1919 to set and promote international labour standards, encourage employment and decent work, promote social protection and encourage social dialogue on work-related issues. New Zealand was a

founding member of the ILO and has maintained a strong association with it ever since. Further information on the ILO is provided in Annex 5.

- **Labour standards in trade agreements.** The *Cabinet Framework for Integrating Labour Issues into Free Trade Agreements* sets out the commitments negotiators should seek in trade agreements based on the ILO fundamental rights. Cabinet sets more detailed mandates for the objectives of each trade negotiation. MBIE will advise you on labour standards implications to inform your decisions on negotiating positions.

New Zealand is currently engaged in negotiations on an Indo-Pacific Economic Framework (IPEF) and a NZ-Gulf Cooperation Council Free Trade Agreement (GCC FTA). **International**

International relations

New Zealand has agreed labour chapters in most of our key FTAs, including the recent UK and EU FTAs. These require regular meetings to discuss how the parties are meeting the labour commitments, and to resolve issues and share experiences on labour standards policy.

- **Asia-Pacific Economic Cooperation Human Resource Development Working Group** – The 21-member Asia-Pacific Economic Cooperation (APEC) was established in 1989 to strengthen the Asia-Pacific community and further enhance economic growth and prosperity for the region. MBIE leads the engagement in the Human Resource Development Working Group (HRDWG). Further information on APEC and the HRDWG is provided in Annex 5.

Major links with other portfolios

98. Labour market issues involve a range of Ministerial portfolios. Closely related portfolios include:

- **Social Development and Employment** – responsible for the welfare system and provides information on the overall performance of the labour market, as well as delivering programmes and services to support employment outcomes.
- **Immigration** – responsible for all immigration elements including settings that enable migrants to participate in the labour market. The Workplace Relations and Safety and Immigration portfolios work closely on initiatives to combat migrant exploitation.
- **Accident Compensation Corporation (ACC)** – responsible for implementing the accident compensation scheme and for the Accident Compensation Corporation (ACC). There is a strong connection to the labour market through providing no-fault personal injury cover (including income support and rehabilitation services), with the aim of returning people to work and independence.
- **Energy** – responsible for the Gas Act 1992 and Electricity Act 1992 and associated regulations. MBIE is the lead policy advisor for the energy regulatory system, including energy safety (the safety of energy production, supply, installation and use, which includes

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public and worker safety and the prevention of property damage). WorkSafe is the regulator for the safe supply and use of gas and electricity under these Acts, extending its role outside work and workplaces.

Energy safety overlaps with the work health and safety aspects of your portfolio and Ministers work together on these matters as they arise, including the manifesto commitments in the energy portfolio such as electric vehicle infrastructure and renewable energy.

- **Women** – has a specific focus on gender workplace issues. Ministers have joint responsibility for some projects in this space such as the pay equity legislation and current work on pay transparency.
- **Trade**– has an interest in the negotiation of labour commitments in trade agreements and proposed legislation to address modern slavery in supply chains.

99. The Minister for Workplace Relations and Safety is typically involved in a number of ministerial groups with a labour market or industrial relations focus. MBIE will support you in your role on any relevant Cabinet Committees and Ministerial groups.

5. How MBIE assists you

Our primary ways of engaging with you

100. We engage with you primarily through the following mechanisms:

- Meetings between yourself and MBIE officials, based on your preference
- Weekly update reports on key policy and operational issues in the portfolio
- Monthly work programme reporting.

101. We are happy to adjust any of these based on your preferred ways of working.

MBIE is responsible for most of the policy and operational functions in the ERES system

102. The table below provides a summary of how MBIE's various roles and responsibilities in the ERES system are spread across different parts of the organisation (including policy, service delivery, and insights-related functions).

Table 3: Roles and responsibilities in the ERES system

MBIE Group	Branch	ERES system role and responsibility
Labour, Science and Enterprise	Workplace Relations and Safety Policy	Policy advice on the regulatory regime and broader workplace relations and safety issues.
Te Whakatairanga Service Delivery	Employment Services	Ensuring compliance with and enforcement of minimum employment standards. Known externally as the Labour Inspectorate.
		Dispute resolution services for employment relationship problems. Known externally as Employment Mediation Services.
		Guidance and capability-building for employers, workers and other actors in the ERES system.
		Regulatory services , such as support for the Employment Relations Authority and the Chief Executive of MBIE in performing their statutory functions. Examples include supporting decision-making in the Fair Pay Agreements system and receiving collective agreements and other bargained agreements (eg pay equity settlements).
		Advice, insights and analysis on the performance of the regulator.
	Engagement and Experience	Providing information and education to employers, workers and the public about employment rights and obligations, how to comply with them, and where to go for help. Channels include the Employment New Zealand website and MBIE's call centre.
	Market Integrity	Registering unions and screen industry organisations through the Companies Office.

<p>Digital, Data and Insights</p>	<p>Evidence and Insights</p>	<p>Generating evidence and insights about the labour market, employment conditions, workplace relations, and migration trends and conditions, working closely with Statistics New Zealand and other external research bodies.</p> <p>This involves working across MBIE and with external stakeholders to provide a range of survey, research, evaluation and analytical work to support regulatory, operational, strategic and policy level direction and decision making. This work supports the portfolio by providing:</p> <ul style="list-style-type: none"> • regular reporting on the state of the labour market and analysis of long-term trends, including job vacancies, as well as responding to ad hoc queries • employment modelling and forecasting • quarterly reports on international migration • easy to access and user-friendly information tools to support policy and strategy development, including the Migration Data Explorer.
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MBIE provides policy advice on, and (with WorkSafe) system stewardship of, the work health and safety system




103. MBIE works closely with WorkSafe in the stewardship of the work health and safety system and energy safety system.

- The **Workplace Relations and Safety Policy Branch of MBIE** provides primary policy advice on the legislation and regulations, and policy and strategic advice on the design and overall performance of the work health and safety system and energy safety.
- The **Entity Performance and Investment branch of MBIE** monitors WorkSafe as a Crown agent, and provides advice on board appointments, governance and performance monitoring.
- **WorkSafe** is the primary work health and safety regulator, and has a leadership role in the work health and safety system. It is also the energy safety regulator.
- The **Civil Aviation Authority** and **Maritime New Zealand** are designated as the work health and safety regulators under the Health and Safety at Work Act 2015 for the aviation and maritime sectors respectively.





Key MBIE officials

104. The table below sets out the key MBIE officials who will support you in this portfolio.

Table 4: Key MBIE officials

Contact	Role	Contact details
<p>Carolyn Tremain</p> 	<p>Secretary and Chief Executive, Ministry of Business, Innovation and Employment</p>	<p>Privacy of natural persons</p>
<p>Nic Blakely</p> 	<p>Deputy Secretary, Labour, Science and Enterprise (LSE)</p> <p>LSE helps boost the New Zealand economy by developing New Zealand’s skills system, science and innovation systems and labour market policy. It does this through advising on labour market, immigration, industry, investment, science, tourism, health and safety at work, and accident compensation policy. LSE supports major events, just transitions, leads the science and innovation system, and invests significant public funds. LSE works through international partnerships in its trade remedies, innovation, and space regulation functions. LSE also leads MBIE’s monitoring arrangements for its related Crown entities.</p>	<p>Privacy of natural persons</p>
<p>Suzanne Stew</p> 	<p>Deputy Secretary, Te Whakatairanga Service Delivery</p> <p>Te Whakatairanga Service Delivery provides critical functions and services that support businesses, employees, and consumers to operate successfully in the marketplace. We deliver information, advisory, dispute resolution, regulatory and enforcement services across the majority of MBIE’s regulatory systems and on behalf of other government agencies. Te Whakatairanga Service Delivery works to ensure Fair Markets that Thrive: an environment where businesses can succeed, and New Zealanders are protected.</p>	<p>Privacy of natural persons</p>

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<p>Anna Clark</p> 	<p>General Manager, Workplace Relations and Safety Policy</p> <p>The Workplace Relations and Safety Policy Branch provides policy and regulatory advice on employment relations and standards, work health and safety, international labour, and accident compensation.</p>	<p>Privacy of natural persons</p>
<p>Jivan Grewal</p> 	<p>General Manager, Employment, Skills and Immigration Policy Branch, LSE</p> <p>The Employment, Skills and Immigration Policy Branch provides policy and regulatory advice on immigration and skills and employment.</p>	<p>Privacy of natural persons</p>
<p>Katherine MacNeill</p> 	<p>General Manager, Employment Services</p> <p>The Employment Services branch is the primary ERES system regulator, including employment dispute resolution services, compliance and enforcement of employment law, regulatory statutory decision making, and administration of the Employment Relations Authority.</p>	<p>Privacy of natural persons</p>
<p>Michael Bird</p> 	<p>General Manager, Entity Performance and Investment, Labour, Science and Enterprise</p> <p>WorkSafe board appointments, governance and performance monitoring (covering all statutory boards in Annex 2)</p>	<p>Privacy of natural persons</p>

6. Upcoming actions and issues to be aware of

105. This section details a number of matters that will, or may, require your attention in the short-to-medium-term. These are categorised as follows:

- **Things that will require your immediate attention** (Tables 5 and 6): Matters where you will be required to do something (eg to consider advice) in the short term.
- **Things to be aware of in the portfolio** (Tables 7-10): Matters that you may need to respond to in the near term (eg because of stakeholder interest), where you have discretion about the timing and nature of that response. Included in this category are four Members' Bills relevant to the portfolio that were on the Order Paper at the end of the previous Parliamentary term.

Things that will require your immediate attention

Table 5: ERES regulatory system

Topic	Description	Driver	Action/next step
Minimum wage review, setting the rate for 2024	MBIE reviews and provides advice on the minimum wage annually. The review analyses the impacts of different minimum wage rate options (including the status quo). This work was started under the previous government and is nearly complete. Your decision will be sought on which rate to progress, with a Cabinet process to follow.	You are required to review the minimum wage annually under Section 5 of the Minimum Wage Act 1983.	In November 2023 MBIE will provide you with the draft review, advice on next steps, and seek your agreement on a minimum wage rate option C Confidential advice to Government

Table 6: Monitoring – WorkSafe

Topic	Description	Driver	Action/next step
WorkSafe's status	Briefing from MBIE's Monitoring team that will provide you with: <ul style="list-style-type: none"> • background information on WorkSafe's status and its current performance • your role as Responsible Minister of WorkSafe and MBIE's monitoring role • options for communicating your expectations to the WorkSafe Board. 	WorkSafe is facing a number of immediate challenges.	Consider MBIE's advice and confirm your priorities.

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Topic	Description	Driver	Action/next step
WorkSafe 2022/23 Annual Report	WorkSafe will provide an Annual Report for the year ended 30 June 2023. MBIE will provide a cover briefing to support the Report's presentation to the House.	Annual reporting requirement.	Present the report to the House.
Letter of Expectations for 2024/25	MBIE may engage early with you on a draft Letter of Expectations for 2024/25.	Annual opportunity to confirm your priorities to WorkSafe's Board.	Consider MBIE's advice and confirm your priorities.
Reporting under the intensive monitoring regime	Regular reporting to you and the Minister of Finance on WorkSafe's progress towards the full implementation of the Strategic Baseline Review recommendations and meeting performance expectations within its funding envelope.	Heightened concerns over the ability of WorkSafe to meet performance expectations and demonstrate accountability for funding provided.	Consider MBIE advice on WorkSafe performance and issues arising.

Things to be aware of in the portfolio

Table 7: ERES regulatory system

Topic	Description	Driver	Action/next step
Recruitment of new Employment Relations Authority members	Budget 23 created new member roles on the Employment Relations Authority.	Vacancies.	Depending on reprioritisation decisions, agree to begin recruitment. A briefing on this can be provided in December 2023.
Complaint about Chief of Employment Relations Authority	A complaint relating to the Chief of the Employment Relations Authority. The Minister for Workplace Relations and Safety is responsible for deciding the response to such complaints.	Complaint on hand.	Decide how to respond to the complaint. A briefing on this can be provided in December 2023.
Holidays Act review	The Holidays Act 2003 has significant issues, making it difficult to implement and contributing to widespread	Cabinet decisions.	Decisions on next steps for the review. A briefing will be provided in December 2023.

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Topic	Description	Driver	Action/next step
	<p>non-compliance and large-scale remediation payments.</p> <p>The previous Government agreed to the 22 recommendations of the tripartite Holidays Taskforce for improvements to the Act. MBIE, with input from a stakeholder working group, has completed a policy design process to develop the details required to implement them in legislation. PCO has started drafting a Bill, but a significant amount of drafting work remains to ensure its quality and accessibility.</p>		
Progress towards modern slavery legislation	<p>In 2023, the previous government agreed to introduce modern slavery and worker exploitation legislation that would only create disclosure responsibilities. Further work would be required to include 'due diligence' and a reactive responsibility to 'take action' if an entity became aware of modern slavery or worker exploitation as these create more complex obligations.</p>	<p>Cabinet decision on the <i>Plan of Action against Forced Labour, People Trafficking and Slavery</i>.</p> <p>This decision reflects a recommendation arising from New Zealand's 2019 Universal Periodic Review by the United Nations Human Rights Council; and a commitment in New Zealand's Free Trade Agreement with the United Kingdom.</p>	<p>Decisions on whether to progress with the introduction of modern slavery and worker exploitation legislation.</p>
Progress towards pay transparency legislation	<p>In August 2023, the previous Government announced a plan to introduce legislation for a pay gap reporting system. A second phase of work would decide on the role and placement of the regulator, and to investigate the inclusion of ethnic pay gap reporting.</p>	<p>Cabinet decision.</p>	<p>Decisions on whether to progress the work on a pay gap reporting system.</p>

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Topic	Description	Driver	Action/next step
Statutory process to set MPs' pay	The pay of members of parliament is set independently by the Remuneration Authority (RA), under its legislation, the Remuneration Authority Act 1977. The current rates will expire on election day, 14 October 2023, and the RA needs to begin its review within three months of the return of the writ. The RA will shortly start the work to determine and set the new rates for the coming Parliamentary term.	Statutory process.	Confidential advice to Government
Confidential advice to Government			
Royal Commission of Inquiry into COVID-19 Lessons Learned	MBIE has been asked to appear before the Royal Commission to provide insights into the policy advice provided during the Covid-19 pandemic. Officials in your portfolio have been providing information about the labour market aspects of the response.	Royal Commission.	Officials will provide information and attend meetings with the Royal Commission as requested.
Diversity Works Board appointments	The Diversity Works Board currently has three public sector vacancies. The Board can still maintain a quorum and continue to operate.	Vacancy.	You will receive advice on public sector candidates in early 2024.
Request to extend coverage of Part 6A of the Employment	Part 6A of the Employment Relations Act provides protections in restructuring	Application made under section 237 of the Employment Relations Act.	MBIE is developing a report, advising whether the statutory criteria are met. If you

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Topic	Description	Driver	Action/next step
Relations Act to support workers	situations for employee groups listed in Schedule 1A. Applications can be made to add occupations to Schedule 1A. Applications are assessed against the criteria in section 237A of the Employment Relations Act.		agree, the next step will be consulting on the report.
Employment Action Plans under the Employment Strategy	There are a number of medium and long-term actions in the Workplace Relations and Safety portfolio as part of the Employment Action Plans	Cabinet decision.	Discuss prioritisation as part of the work programme.
National Action Plan Against Racism	The Ministry of Justice is developing a National Action Plan Against Racism. The plan will include employment sector-specific actions. We have been working with the Ministry of Justice on this.	Cabinet decision.	The Ministry of Justice is developing the action plan, and we expect Ministers to be consulted before the end of the year.
Indo-Pacific Economic Framework (IPEF) negotiation announcements	IPEF negotiations have been ongoing across a number of Pillars/Agreements. These Agreements may include labour commitments on migrant protections, freedom of association, effective courts, government procurement and just transitions.	Cabinet decision.	The Cabinet decision may need to be updated to allow conclusion of the Agreements.

Table 8: Work health and safety regulatory system

Topic	Description	Driver	Action/next step
Plant, Structures, Working at Heights and Excavations Regulations	Completing the modernisation of outdated regulations for plant (eg machinery and tools) and structures, and work at heights (including scaffolding), following a substantial consultation and drafting process. These regulations are difficult to comply with and enforce, in areas that account for nearly 80% of work-related deaths.	Cabinet decisions modernising outdated and incomplete regulations.	Briefing seeking your decisions on how you want to approach work on these regulations.

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Topic	Description	Driver	Action/next step
Controlling risks to workers from engineered stone fabrication (Accelerated Silicosis)	Options (non-regulatory to regulatory) to control risks to workers from exposure to respirable crystalline silica, informed by policy interventions being progressed in Australia.	Increasing work-related harm.	Briefing seeking your decisions on range of options and potential public consultation.
High-risk work licensing for refrigerants	Finalising regulations for licensing of technicians working with high-risk (flammable, toxic, very-high pressure) commercial refrigerants.	Meeting international obligations under the Montreal Protocol.	Briefing seeking your decisions on finalising these regulations.
Creating a safety regime for novel uses of hydrogen	Options for a policy work programme to update safety regulations to allow novel uses of hydrogen.	Supports the commitments relating to renewable energy in the National-ACT Coalition agreement, and National Party Policy Programme.	Briefing seeking your decisions on a policy work programme to modernise safety regulations to support the novel uses of hydrogen.

Table 9: Monitoring – WorkSafe

Topic	Description	Driver	Action/next step
WorkSafe Crown Entity Monitoring Status	In September 2023 MBIE advised the Chair of WorkSafe that it was upgrading WorkSafe’s monitoring status from “on watch” to “intensive monitoring”.	Problems with WorkSafe’s performance and financial management over a sustained period.	MBIE will place increased reporting and information sharing requirements on WorkSafe and brief you regularly.
Appointment of independent Crown Observer	A Crown Observer (through a delegation from the previous Minister of Workplace Relations and Safety to MBIE) has been appointed to provide independent oversight of the performance of the WorkSafe Board and report on that to MBIE in its role as Crown monitor.	As part of giving effect to the intensive monitoring activity and driving rapid change and improvement.	MBIE will incorporate information, insights and progress reporting from the Crown Observer in its advice to you.

Topic	Description	Driver	Action/next step
Strategic Baseline Review	WorkSafe is implementing the findings of a Strategic Baseline Review that aims to deliver a more rigorous standard of regulatory performance through strengthened activity analysis and performance evaluation, enabling better resource allocation for more effective outcomes. This will inform the level of funding that is required to support WorkSafe going forward.	Inadequate regulatory strategy and management control systems, meaning limited understand of Inputs-Outputs-Outcomes and ability to optimise resources and activity for performance.	MBIE will incorporate progress into its reporting to you via the intensive monitoring and independent Crown Observer measures.

Table 10: Relevant legislation on the Order Paper at the end of the previous Parliamentary term

106. A decision about whether to reinstate Member’s Bills that were on the Order Paper of the 53rd Parliament will be made by the member or political party from which the Member’s Bill originated. We will keep you updated about the status of these Bills and can provide information or advice as required.

Title	Type of Bill	Description	Status	Next steps
Employment Relations (Restraint of Trade) Amendment Bill	Member’s Bill	This Bill would prohibit the use of restraints of trade in employment agreements for lower and middle income employees. It would require employers of higher income employees to carefully consider whether a restraint of trade is appropriate in relation to those employees and, if they insist on a restraint of trade, to compensate the employees for it.	Referred to select committee.	Select committee (if reinstated).
Crimes (Theft by Employer) Amendment Bill	Member’s Bill	This Bill seeks to amend the Crimes Act 1961 to “clarify that not paying an employee their wages is theft.” The Bill’s general policy statement notes that “this small change will	Referred to select committee.	Select committee (if reinstated).

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Title	Type of Bill	Description	Status	Next steps
		provide clear direction to employees that they have the right to be paid what they are due and that it is clearly set out in law.”		
Employment Relations (Protection for Kiwisaver Members) Amendment Bill	Member’s Bill	This Bill aims to “restore the protections provided for by the principal Act before it was amended in 2008 and ensure that the majority of workers cannot be discriminated against simply because they are members of a KiwiSaver scheme or a complying superannuation fund.”	Referred to select committee.	Select committee (if reinstated).
Employment Relations (Trial Periods) Amendment Bill	Member’s Bill	The objective of this Bill is to enable businesses that have 20 or more employees to include a 90-day trial period in a new employee’s employment agreement.	Introduced, awaiting first reading	First reading (if reinstated). As part of the advice on implementing the Coalition Agreement commitment to extend the use of 90-day trials to all employers, MBIE will provide information on how this Member’s Bill interacts with that commitment.

Annex 1: Relevant legislation

The Minister for Workplace Relations and Safety is responsible for the following Acts and the regulations that sit under them.

Employment relations and standards regulatory system

Employment Relations Act 2000

Regulates relationships between employees, employers and unions, including promoting good faith, fair process and collective bargaining. Sets out dispute resolution processes and the provision of mediation services, governs personal grievances and establishes the Employment Relations Authority and Employment Court. Also establishes Labour Inspectors to monitor and enforce compliance with employment standards.

Equal Pay Act 1972

Establishes the right to equal pay for male and female employees. The Equal Pay Amendment Act 2020 expressly provided for a pay equity regime, creating a process for raising pay equity claims directly with an employer, and if any issues are identified, addressing them through a process that is aligned with New Zealand's existing bargaining framework.

Fair Pay Agreements Act 2022

Provides a framework for bargaining for fair pay agreements that specify industry- or occupation-wide minimum employment terms, or in certain circumstances, for the Employment Relations Authority to determine those minimum employment terms.

Holidays Act 2003

Provides all employees with minimum paid entitlements to annual holidays, public holidays for the observance of days of national, religious, or cultural significance and sick leave, bereavement leave and family violence leave. It sets out how and when leave entitlements and payments are calculated and must be paid to employees in various circumstances. The purpose of this Act is to promote balance between work and other aspects of employees' lives.

Minimum Wage Act 1983

Prescribes minimum wages for all employees (including starting-out and training minimum wages), and establishes a process for reviewing the minimum wages annually.

Parental Leave and Employment Protection Act 1987

Provides parents who are employees or are self-employed with entitlements to payments and unpaid job-protected leave from work.

Remuneration Authority Act 1977

Creates the Remuneration Authority to set the pay for key office holders such as Judges and Members of Parliament.

Screen Industry Workers Act 2022

Provides a new framework for workplace relationships in the screen industry and gives contractors who work in the screen industry new rights and protections.

Sharemilking Agreements Act 1937

Establishes minimum conditions for sharemilkers (who are contractors rather than employees).

Shop Trading Hours Act 1990

Restricts the days on which certain shops can trade or be open.

Trade Unions Act 1908

Sets out some requirements for trade unions to operate, including requiring a registry of unions to be kept.

Union Representatives Education Leave Act Repeal Act 1992

This Act repeals the *Union Representatives Education Leave Act 1986*, which guaranteed a certain number of days of leave for union members to attend education or training.

Volunteers Employment Protection Act 1973

Protects the employment status of employees who take leave from their work for the purposes of voluntary service or training in the Armed Forces

Wages Protection Act 1983

Sets out how wages are to be paid to an employee and prohibits employers from making unlawful deductions.

Regulations in the ERES system
Employment Court Regulations 2000
Employment Relations Authority Regulations 2000
Employment Relations (Infringement and Reminder Notices) Regulations 2016
Employment Relations (Infringement Offences) Regulations 2019
Employment Relations (Prescribed Matters) Regulations 2000
Fair Pay Agreements Regulations 2022
Minimum Wage Order 2022
Parental Leave and Employment Protection Regulations 2002
Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022
Sharemilking Agreements Order 2011

Annual requirements

You must review minimum wage rates in each year ending on 31 December under the *Minimum Wage Act 1983*. Following the review you may, in that year or subsequently, make recommendations to the Governor-General regarding the adjustments that should be made to that minimum rate.

Under the *Parental Leave and Employment Protection Act 1987*, parental leave payment rates are adjusted from 1 July each year in accordance with a formula in the Act (based on wage growth). You are required to publish the adjusted maximum payment rate and the adjusted minimum rate for self-employed persons (MBIE facilitates these requirements being met).

Work health and safety regulatory system

Health and Safety at Work Act 2015

Places duties on businesses, their officers (eg company directors), and workers to protect workers and other persons against harm to their health and safety by managing the risks

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arising from work. Provides for work health and safety engagement, participation and representation, consultation, and issue resolution. Promotes the provision of advice, information, education and training for work health and safety, and provides for compliance and enforcement measures.

Mines Rescue Act 2013

Provides for a co-ordinated response to mine emergencies, and establishes the Mines Rescue Trust.

WorkSafe New Zealand Act 2013

Establishes WorkSafe New Zealand, to promote and contribute to securing the health and safety of workers and workplaces. Provides for its functions and governance arrangements.

Regulations made under the <i>Health and Safety at Work Act 2015</i>
Health and Safety at Work (General Risk and Workplace Management) Regulations 2016
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 (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 at Work (Rates of Funding Levy) Regulations 2016
Health and Safety at Work (Infringement Offences and Fees) Regulations 2016
Health and Safety at Work (Hazardous Substances) Regulations 2017
Regulations saved by the <i>Health and Safety at Work Act 2015</i>
Health and Safety in Employment Regulations 1995
Health and Safety in Employment (Pipelines) Regulations 1999
Health and Safety in Employment (Pressure Equipment, Cranes, and Passenger Ropeways) Regulations 1999
Amusement Devices Regulations 1978 (made under the <i>Machinery Act 1950</i>)
Spray Coating Regulations 1962 (made under the <i>Health Act 1956</i>)
Lead Process Regulations 1950 (made under the <i>Health Act 1956</i>)
Geothermal Energy Regulations 1961 (made under the <i>Geothermal Energy Act 1953</i>)
Other regulations
Mines Rescue (Levy) Regulations 2014 (made under the <i>Mines Rescue Act 2014</i>)

Annex 2: Crown entities, institutions and statutory bodies, and international bodies

The institutions and statutory and advisory bodies associated with the portfolio are:

- WorkSafe New Zealand (WorkSafe)
- Employment Relations Authority
- Remuneration Authority
- Mines Rescue Trust
- Diversity Works Trust (legal name the Equal Employment Opportunities Trust)
- Industrial Relations Foundation (IRF).

Each entity is discussed below. MBIE provides you with support in your monitoring of these entities.

WorkSafe New Zealand

WorkSafe New Zealand (WorkSafe) was established by the WorkSafe New Zealand Act 2013 on 16 December 2013. Under the Crown Entities Act 2004 it is a Crown agent, led by a governing Board.

WorkSafe's vision is: "We are working towards a productive New Zealand in which everyone who goes to work comes home healthy and safe." It has three core roles that drive it: regulatory effectiveness, harm prevention and system leadership. It works collaboratively with businesses, organisations, workers and their representatives to embed and promote good work health and safety practices.

The Minister for Workplace Relations and Safety must appoint between five and nine board members. The appointment process typically takes between three and six months. When appointing a member of the board, the Minister must have regard to the need to ensure that WorkSafe has among its members persons who collectively have knowledge and experience of, and capability in, the following:

- public sector governance
- central government processes
- New Zealand's work health and safety environment, including workplace illness and occupational disease
- perspectives of workers
- perspectives of employers
- administration of work health and safety legislation and risk management frameworks
- business generally.

The Minister may not appoint any member of the board unless the Minister has first publicised an invitation for nominations from interested parties and considered any nominations received.

More detailed information about WorkSafe will be provided in its briefing to you.

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Members of the WorkSafe Board		
	Date of original appointment	Expiry date of present term
Jennifer Kerr (Chair)	17 October 2022	16 October 2025
Bill Moran (Deputy Chair)	01 July 2019	18 June 2026
Kristen Thompson	01 July 2019	18 June 2026
James Fletcher	15 June 2020	14 June 2023*
Robin Hapi	15 June 2020	14 June 2023*
Pauline Lockett	01 May 2022	28 February 2025
Lois Hutchinson	01 March 2022	28 February 2025
Bill Newson	10 March 2022	9 March 2025
Mark Leslie	13 July 2023	12 July 2026

* A Board member continues in office despite the expiry of his or her term of office until (a) the member is reappointed; or (b) the member's successor is appointed; or (c) the member is informed by written notice that the member is not to be reappointed and no successor is to be appointed at that time (section 32(3) Crown Entities Act 2004).

Employment Relations Authority

The Employment Relations Authority (the Authority) | Te Ratonga Ahumana Taimahi is a quasi-judicial investigative body with the role of resolving and making determinations about employment relationship problems that cannot be solved through mediation or other means. The Authority has offices in Auckland, Wellington, and Christchurch, and members travel when required. MBIE provides support to the Authority.

Under section 166 of the Employment Relations Act 2000, the Authority consists of one member appointed as Chief of the Authority, and at least two other members. Section 167 provides for appointment of members to the Authority by the Governor-General on your recommendation as the Minister for Workplace Relations and Safety. Section 169 provides that members of the Authority are appointed for terms of up to four years, and are eligible for reappointment from time to time.

The Authority currently has 26 members. One member has been temporarily appointed until the end of 2023 (Alastair Dumbleton), and another member will retire at the end of his current term in February 2024 (Mike Loftus). In Budget 2023, funding was provided for seven new Authority members, bringing the total permanent-funded establishment to 31 Members including the Chief. You will receive advice shortly on commencing recruitment for the seven member vacancies.

Members of the Employment Relations Authority (by expiry date of present term)			
Name	Location	Date of original appointment	Expiry date of present term
Alastair Dumbleton (temporary appointment)	Auckland	7 February 2022	31 December 2023
Mike Loftus (will retire when term expires)	Wellington	1 June 2010	17 February 2024
Helen Doyle	Christchurch	19 December 2001	18 December 2024
Rachel Larmer	Auckland	1 July 2010	3 February 2025
Alex Leulu	Auckland	12 December 2022	30 September 2025
Natasha Szeto	Wellington	12 December 2022	30 September 2025
Shane Kinley	Wellington	12 December 2022	30 September 2025
Lucia Vincent	Christchurch	14 November 2022	30 September 2025

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Members of the Employment Relations Authority (by expiry date of present term)			
Name	Location	Date of original appointment	Expiry date of present term
Sarah Blick	Auckland	1 March 2022	31 December 2025
Andrew Gane	Auckland	1 March 2022	31 December 2025
Rowan Anderson	Wellington	21 March 2022	31 December 2025
Antoinette Baker	Christchurch	31 January 2022	31 December 2025
Sarah Kennedy-Martin	Wellington	29 March 2021	30 September 2026
Geoff O'Sullivan	Wellington	30 September 2019	29 September 2026
Nicola Craig	Auckland	12 October 2015	29 September 2026
Peter van Keulen	Christchurch	12 October 2015	29 September 2026
Andrew Dallas (Chief)	Christchurch	2 November 2015	29 September 2026
Robin Arthur	Auckland	29 July 2013	29 September 2026
David Beck	Christchurch	3 February 2020	29 September 2026
Eleanor Robinson	Auckland	1 July 2010	29 September 2026
Davinnia Tan	Wellington	1 July 2023	30 September 2026
Jeremy Lynch	Auckland	13 July 2023	30 September 2026
Claire English	Wellington	12 July 2021	30 June 2027
Philip Cheyne	Christchurch	3 February 2020	2 February 2028
Marija Urlich	Auckland	3 February 2020	2 February 2028
Peter Fuiava	Auckland	5 April 2021	4 April 2028

Remuneration Authority

The Remuneration Authority | Te Mana Utu Matua is established under the Remuneration Authority Act 1977 (the Act). It is an independent statutory body which is responsible for determining the remuneration (sometimes including superannuation/retirement savings, annuities, expenses, allowances and benefits) for a wide variety of senior public office holders and, in some cases, their spouses, partners and family members. These office holders include the Governor-General, members of Parliament (MPs), judicial officers, elected members of local authorities (councils, local boards and community boards) and a wide range of statutory officers.

For most roles the Remuneration Authority is responsible for, it reviews remuneration annually. However, for MPs the Act requires the Remuneration Authority to begin a review of their salaries and allowances within 3 months from the return of the writ following the general election. After the review the Remuneration Authority must issue a determination that sets MPs' pay for the three-year term of Parliament, with any annual adjustments built into the determination.

The Remuneration Authority is comprised of a Chair, Deputy Chair and a Member, all of whom are part time.

Members of the Remuneration Authority			
Name	Location	Date of original appointment	Expiry date of present term
Geoff Summers (Chair)	Wellington	1 December 2015	18 July 2025
Dallas Welch	Wellington	13 September 2021	27 October 2025
Vern Walsh	Wellington	4 July 2022	18 July 2025

The Mines Rescue Trust Board

The Mines Rescue Trust Board provides specialist emergency rescue services for coal mines, underground metalliferous mines, and tunnels over 150m under construction. It also responds if requested by Police or Fire and Emergency New Zealand to other emergencies that require specialist long duration breathing capability, for example the Whakaari/White Island rescue.

The Trust is a charitable trust that is also recognised by the Minister for Workplace Relations and Safety under the Mines Rescue Act 2013. The Mines Rescue Act sets out statutory functions to assist mining operations with emergency planning, to train and equip special mines rescue brigades, and to deploy those brigades in the event of an emergency. The Act and accompanying Mines Rescue (Levy) Regulations 2014 provide an industry levy to fund the functions. Each financial year the Trust identifies the costs of providing the functions specified in the Mines Rescue Act, and a formula that incorporates relative risk and size of operation is used to calculate the levy amount for each mine and tunnel covered by the legislation. Changes in the make-up of the industry in recent years have meant that the cost is now borne by a smaller number of operations, with each operator contributing more. The Trust is not funded to respond to incidents outside of mines and tunnels.

The Trust is governed by a board that represents levy payers as specified in the Mines Rescue Act. Each group of levy payers nominates their representative (they are not appointed by the Minister). The Trust can also appoint additional members. The required members are:

- one person appointed by WorkSafe (non-voting member)
- two who represent mine operators of underground coal mines
- one who represents mine operators of opencast coal mines
- one who represents mine operators of underground metalliferous mines
- one who represents tunnelling operators, and
- one from the Engineering, Printing and Manufacturing Union.

There are no underground coal mines operating in New Zealand. The Board is still able to operate without anyone appointed to these roles. The Board has decided to retain Andrew Holley (who was appointed to represent underground coal mines at the time Roa Mine was operating underground) as a member.

Members of the Mines Rescue Trust Board		
Member	Organisation	Representing
Joe Edwards	McConnell Dowell (Chair)	Tunnelling operators
Andrew Holley	New Zealand Coal and Carbon Limited (Roa Mine)	Nominated to represent underground coal mines, and retained as a member
Richard Tacon	Bathurst Resources	Opencast coal mines
James Isles	OceanaGold	Underground metalliferous mines
Garth Elliott	E tū Union	Engineering, Printing and Manufacturing Union
David Bellett	WorkSafe (Deputy Chief Inspector Extractives)	WorkSafe
Alison Paul	OceanaGold	Invited

MBIE administers the legislative framework governing the Trust and its levy. WorkSafe’s High Hazards Unit has a close operational relationship with the Trust.

Diversity Works New Zealand

Diversity Works New Zealand (legal name the Equal Employment Opportunities Trust) is a not-for-profit organisation, jointly established as a charitable trust by government and the private sector in 1992. The purpose of the Trust is to provide New Zealand employers with information and tools to raise awareness of the business benefits of effectively managing diversity in the workplace. Diversity Works also provides consultancy services to organisations on diversity matters.

Diversity Works is governed by Trustees representing the private and public sectors. The five private sector trustees are elected by Diversity Works members and the four public sector trustees are nominated by the Minister for Workplace Relations and Safety and the Minister for Women.

Two public sector members have resigned due to changes in their employment circumstances, and a third public sector term expired on 23 June 2023, leaving three vacancies. During the pre-election period, joint Ministers decided not to make appointments. Officials can provide joint Ministers advice on a shortlist for nominations, or Ministers can jointly nominate candidates.

Name	Organisation
Private Sector Trustees	
Susan Doughty (Chair)	Fonterra Co-operative Group
Adrienne Miller	Cupola
Tracey Taylor	Yellow New Zealand
John Christie	Enterprise Dunedin
Ranjna Patel	Nirvana Health Group
Public Sector Trustees	
Renee Graham	Social Wellbeing Agency

New Zealand Industrial Relations Foundation (IRF)

The IRF is a charitable trust established in 1977. Its purpose is to promote, through education, better industrial relations in New Zealand. It does this by funding research into significant questions or issues in industrial relations.

The IRF is administered by five trustees. The trustees of the IRF, whose functions include awarding the grants, are:

- the Minister for Workplace Relations and Safety (Chairperson)
- the President of Business New Zealand (BusinessNZ)
- the Chief Executive of BusinessNZ
- the President of the New Zealand Council of Trade Unions (NZCTU)
- the Secretary of NZCTU.

A Steering Group advises the trustees on applications for grants, how best to achieve its aims, fund management, and administrative matters. The Steering Group consists of:

- the Chief Executive of MBIE or their nominee
- the Chief Executive of Business NZ or their nominee
- the Secretary of NZCTU.

Secretariat support for the IRF is provided by MBIE.

The IRF has often sought applications for funding annually, but at times less frequently. Applications are considered and decided on by the trustees, and MBIE provides briefings to the Minister to seek input on funding decisions. The IRF usually allocates \$40 – 60,000 for funding grants each round but this can vary based on the applications received. The total asset amount for the IRF as at 22 September 2023 is **Commercial**

During the last funding round completed in October 2023, three grants were awarded totalling **Confidential** The grants are for the following three projects:

Commercial Information



The next funding round is expected around 2027 – 2028.

Annex 3: Key stakeholders

Crown Entities and Other Related Bodies	
WorkSafe New Zealand	Chair: Jennifer Kerr Deputy Chair: Bill Moran Chief Executive: Steve Haszard
Employment Relations Authority	Chief: Andrew Dallas
Employment Court	Chief Judge: Christina Inglis
Equal Employment Opportunities Trust	See list of trustees in Annex 2
Remuneration Authority	See list of members in Annex 2
Worker/Union	
Council of Trade Unions	President: Richard Wagstaff Secretary: Melissa Ansell-Bridges
Public Service Association	National Secretaries: Kerry Davies and Duane Leo
E tū	National Secretary: Bill Newson
First Union	General Secretary: Dennis Maga
Business Stakeholders	
Business New Zealand	Chief Executive: Kirk Hope Manager, Employment Relations: Paul Mackay
Employers and Manufacturers Association (Northern)	Chief Executive: Brett O'Riley
Business Leaders' Health and Safety Forum	Chair: George Adams Executive Director: Francois Barton
Health and Safety Association of New Zealand	Chair: Mike O'Brien
Modern Slavery Leadership Advisory Group	Chair: Rob Fyfe

Annex 4: Funds and appropriations

Vote Labour Market: Budget Structure

Five Ministers are responsible for appropriations in Vote Labour Market. As of October 2023, for 2023/24:

- The **Minister for ACC** is responsible for appropriations totalling \$2,222.2m, primarily to cover the estimated cost of injury prevention, claims processing, medical services and social rehabilitation for claims on the Non-Earners' Account, and for treatment injuries.
- The **Minister of Immigration** is responsible for appropriations totalling \$578.3m, primarily for the provision of immigration services, including assessment and processing services, settlement and integration of refugees and integrity and security of the New Zealand immigration system.
- The **Minister for Social Development and Employment** is responsible for appropriations totalling \$20.6m for the operation of Regional Skills Leadership Groups and the provision of employment information and facilitation services.
- The **Minister for Workplace Relations and Safety** is responsible for appropriations totalling \$225.6m (including \$4.6m capital), primarily for the provision of employment relations services and work-related health and safety services.
- The **Minister of Health** is responsible for one multi-year appropriation with \$21.2m allocated within it for 2023/24, for the provision of border support services from MBIE to Customs New Zealand to support the Traveller Health Declaration System.

The lead minister for Vote Labour Market (see below) also has overall responsibility for a multi-category appropriation (MCA) of \$28.4m to provide Policy Advice and Related Services to Ministers in the areas of ACC, Income Insurance, Employment, Immigration and Workplace Relations and Safety – this amount per portfolio is reflected in the totals above.

MBIE is responsible for administering Vote Labour Market.

During the course of the financial year, each minister with responsibility for appropriations within the Vote receives:

- October and March Baseline Updates
- In-Principle Expense and Capital Transfers, and Retentions of Underspend (June)
- Estimates and Supplementary Estimates (Budget documentation, April)
- Select Committee Estimates Examination material (July)
- Preparatory material ahead of the Estimates debate (usually August) and Annual Review (usually May) debate in the House, if required.

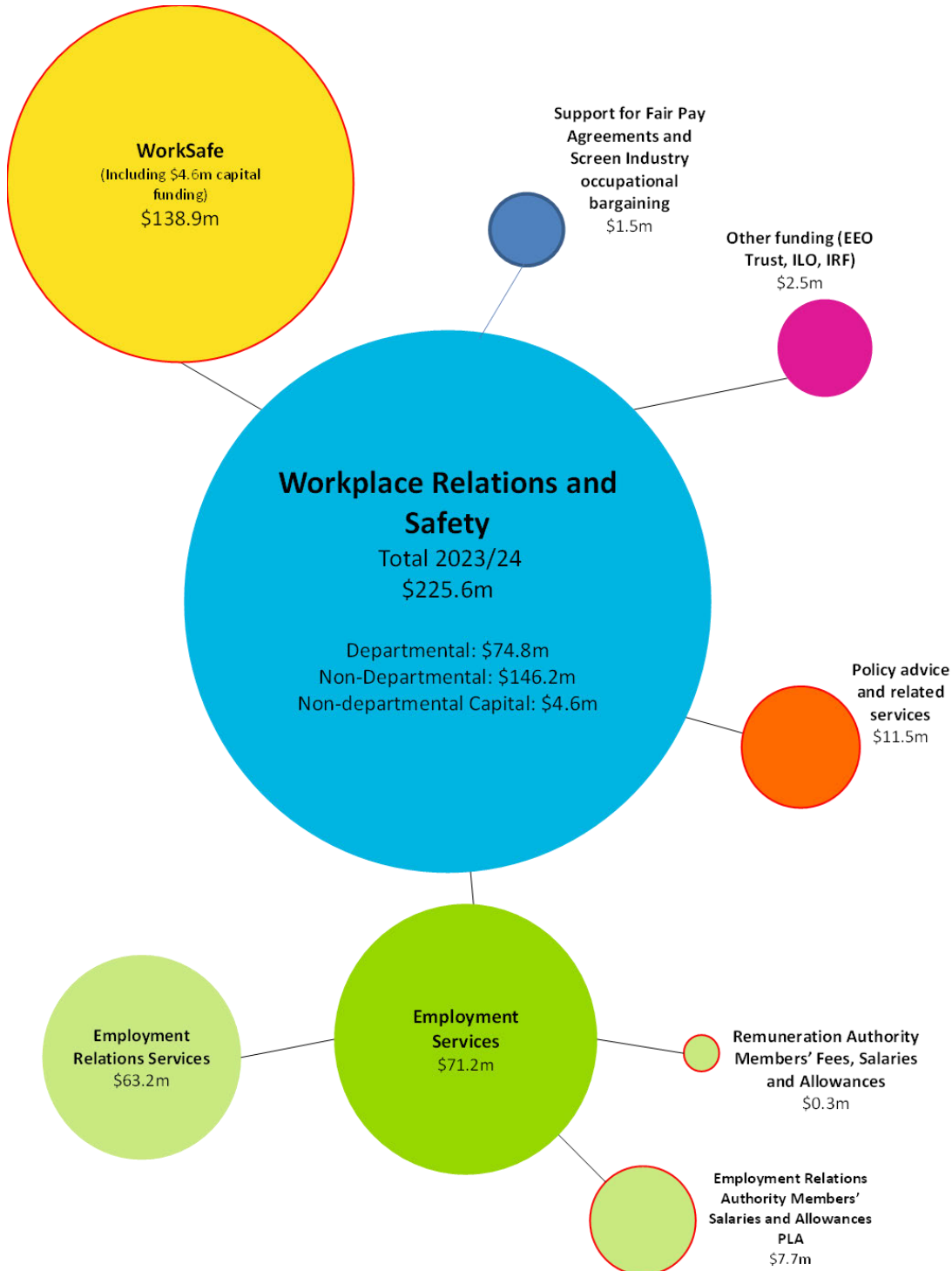
Vote Lead Minister

For administrative simplicity, one Minister is usually selected to take overall responsibility for the final submission of Budget-related documentation for each Vote. For Vote Labour Market, the responsibility has historically sat with the Minister for Workplace Relations and Safety or the

Minister of Labour. The Vote Lead Minister is also named as the technical owner of the Policy Advice and Related Services MCA, but for practical purposes any decisions on each category are usually delegated to the respective portfolio Ministers.

Workplace Relations and Safety portfolio appropriations

The diagram below sets out the total 2023/24 appropriation for the Workplace Relations and Safety portfolio. This captures both departmental funding (funding received by MBIE to provide services directly) and non-departmental funding (funding provided via MBIE to other agencies for them to provide services). Circles outlined in red indicate partial levy funding.



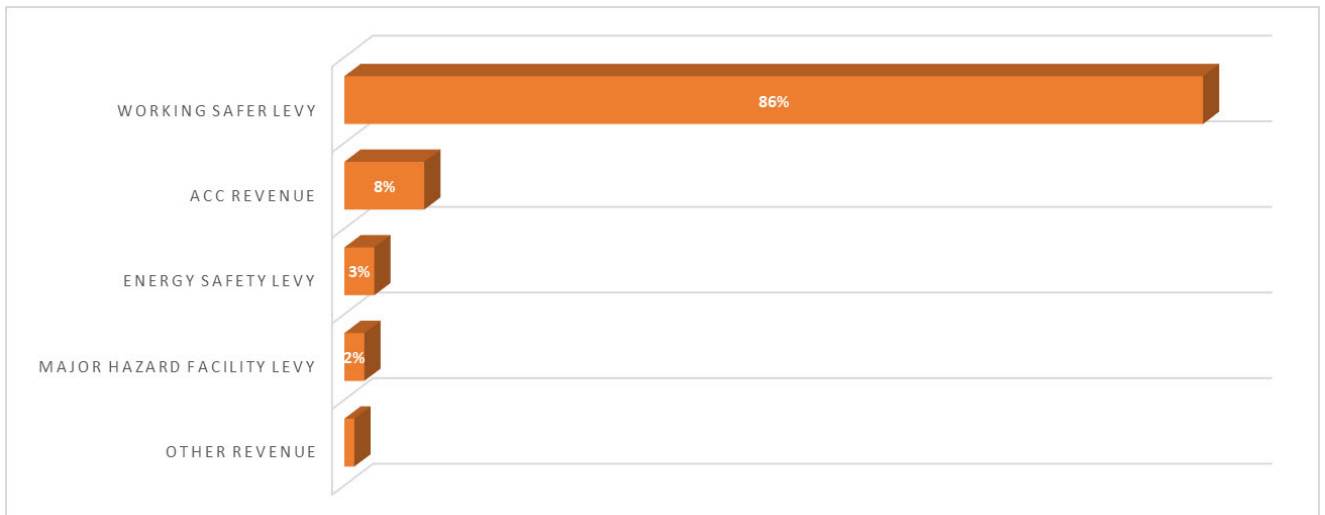
The Health and Safety at Work Levy

WorkSafe New Zealand is funded through an appropriation set by Government, with these costs then recovered primarily by the Health and Safety at Work levy under the Health and Safety at Work Act 2015. The appropriation for 2023/24 is \$138.9m, \$0.869m of which is paid to ACC for the collection of the Health and Safety at Work levy and \$4.6m for Capital Expenditure.

The Health and Safety at Work levy is paid by all employers and self-employed at 8 cents per \$100 of liable earnings, collected by ACC alongside its Work Account levy. The costs of the work health and safety functions of WorkSafe, the Civil Aviation Authority and Maritime New Zealand (as designated regulators under the Act), are recovered from the levy, which is a dedicated funding source that cannot be used elsewhere. MBIE’s work health and safety policy advice is also recovered by the Health and Safety at Work levy.

In addition to the Health and Safety at Work levy, WorkSafe’s costs are recovered from three other funding sources: energy levies paid by electricity and gas industry operators (and collected by MBIE), which fund WorkSafe’s electricity and gas safety services; the Major Hazard Facilities levy paid by facility operators; and a small amount of Crown funding for a hazardous substances register and test certification. WorkSafe also charges fees for some regulatory services, eg safety case assessments, registrations and licences. WorkSafe also receives funding from ACC for harm prevention initiatives under the joint WorkSafe/ACC Harm Prevention Action Plan, through a multi-year partnership agreement of up to \$15.00m per annum.

The WorkSafe 2022/23 Statement of Performance Expectations contains the following breakdown of WorkSafe’s funding sources.



Annex 5: Further detail on international responsibilities

International Labour Organization

The ILO is a tripartite body, governed jointly by member States and the international representatives of workers and employers. ILO membership involves regular interactions between the Government, Business New Zealand and the New Zealand Council of Trade Unions, as well as participation in the ILO's Governing Body and at its annual International Labour Conference. New Zealand is not currently a member of the Governing Body, which comprises 56 titular members and 66 deputy members, participating instead as an observer. New Zealand was last a member in 2005. A decision on whether to stand for the Governing Body in 2024 will be required.

The ILO oversees a comprehensive body of International Labour Standards, and the Conference is the key means by which the ILO formulates those standards and holds member States to account over their observance of them.

Standards can take the form of treaty-level Conventions or Protocols, or guiding Recommendations. Conventions and Protocols are only binding on member States that have ratified them. Once members ratify a Convention or Protocol this commits them to observe its provisions in national law and practice, report regularly on its application, and be accountable under the ILO supervisory system for any alleged breaches. New Zealand has ratified 61 ILO Conventions and one Protocol, of which 33 are currently in force. The most recent instrument ratified by New Zealand is the Forced Labour Protocol (P029), ratified on 13 December 2019, which came into force on 13 December 2020.

In addition, the ILO denotes eleven specific Conventions that deal with core labour rights as "Fundamental Conventions." There are considered so important that even member States that have not ratified them are expected to uphold the principles and rights they promote and report regularly on their observance. These are:

- Convention 29 - Forced Labour
- Convention 87 - Freedom of Association
- Convention 98 - Right to Organise and Collective Bargaining
- Convention 100 - Equal Remuneration
- Convention 105 - Abolition of Forced Labour
- Convention 111 - Discrimination (Employment and Occupational)
- Convention 138 - Minimum Age
- Convention 155 - Occupational Health and Safety
- Convention 182 - Worst Forms of Child Labour
- Convention 187 - Promotional Framework for Occupational Safety and Health
- Protocol 29 - Protocol of 2014 to the Forced Labour Convention.

New Zealand has ratified all but three of these Conventions – Convention 87 on Freedom of Association, Convention 138 on the Minimum Age and Convention 187 on a Promotional Framework for Occupational Safety and Health. As a matter of general policy, New Zealand does not ratify

international instruments until it is able to comply fully with them in terms of domestic law and practice.

In terms of Convention 87, although New Zealand has embedded freedom of association in the Employment Relations Act 2000, the ILO generally interprets the Convention to allow for the protected exercise of secondary strike action and strikes on economic or social grounds. New Zealand employment law only treats strikes taken in the course of collective bargaining or on health and safety grounds as lawful and protected. This issue of interpretation has been contentious for the Organisation and its members, with the November 2023 Governing Body deciding to refer it to the International Court of Justice for an advisory opinion.

In terms of Convention 138 concerning Minimum Age, the current range of protections and restrictions on young people's work (mainly regulated by a combination of education and work health and safety legislation) has been seen as preferable to legislating for a specific minimum age for admission to employment. Informal consultation with the ILO is underway on the alignment of New Zealand's current law and practice with Convention 138 and officials are working to clarify what legislative and policy changes are necessary to start the ratification process. It is likely that the minimum age for employment in hazardous work will need to be raised from 15 years and further legislative changes may also be required.

In June 2022, the ILO designated two current Conventions as new Fundamental Conventions – Convention 155 on Occupational Health and Safety, and Convention 187 on Promotional Framework for Occupational Safety and Health. New Zealand has ratified Convention 155, but not Convention 187.

Decisions on work towards ratification of all three unratified Fundamental Conventions will need to be considered to implement a legal obligation in the NZ-European Union Free Trade Agreement (EU-NZ FTA), signed in July 2022. The EU-NZ FTA will be ratified by New Zealand in 2024, and requires New Zealand to make "continued and sustained efforts towards ratifying" unratified Fundamental ILO Conventions. Ambitious trade and labour outcomes have been an important part of the FTA for both the European Union and New Zealand. The European Union has indicated that New Zealand meeting this commitment is of significant importance.

As a member of the ILO, annual reporting on our application of both ratified and unratified Conventions is required. As part of this reporting cycle, the ILO also surveys member States on experiences of a selected topic covered by international labour standards that then are discussed at a subsequent International Labour Conference. The Government's response to the survey for 2024 will require approval for consultation with social partners, BusinessNZ and the New Zealand Council of Trade Unions, by early 2024.

Trade and Labour Standards

The 2023 Cabinet *Framework for Integrating Labour Issues into Free Trade Agreements* guides negotiators on the labour elements they should seek in trade negotiations, which are based on ILO fundamental rights and shared international labour issues.

The framework is a public statement of New Zealand's objectives, setting out principles that our trade agreements should aim to promote, rather than specifying particular outcomes. Two key principles are that trade agreements should promote decent work in New Zealand and for our trading partners, and the ILO's Fundamental Principles and Rights at Work are a basis for labour

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standards trade agreements. It also reflects increased global interest and concerns over fair competition in cases where trade advantage may be secured through unfair labour practices.

The Ministry of Foreign Affairs and Trade (MFAT) leads New Zealand's trade negotiations overall. MBIE leads in the area of trade and labour, working alongside MFAT in negotiations. MBIE also implements labour commitments and manages the relationship with partner countries.

Since 2001, New Zealand has negotiated trade and labour instruments under nine trade agreements covering 18 countries as well as the recent EU-NZ FTA. The conclusion of the Comprehensive and Progressive Trans-Pacific Partnership in 2017 reinforced the need to recalibrate trade policy generally given emerging public concerns over trade agreements and a perceived loss of social licence. In April 2018, the Minister for Trade and Export Growth launched the Government's Progressive and Inclusive Trade for All Agenda, focused on reinforcing the social license of trade agreements and using trade as a tool to enhance social wellbeing through an emphasis on sustainable development, including labour, environment, climate and gender issues.

Cabinet subsequently established a Trade for All Advisory Board in November 2018 to make recommendations on effecting a sustainable and inclusive trade policy. The Board reported in November 2019. A key recommendation was that:

MFAT and MBIE should be directed to work with social partners to redevelop the 2001 Cabinet Framework for Trade and Labour.... This work should also include an assessment of whether both the Framework and New Zealand legislation to address modern slavery are sufficient, given international trends.

The updated Framework was published in August 2023. It includes more modern labour issues and highlights the importance of advancing Māori interests, providing for greater Māori, civil society, business and social partner engagement in the operation and review of trade agreements.

New Zealand is currently engaged in negotiations on an Indo-Pacific Economic Framework (IPEF) and has re-engaged in negotiations on a NZ-Gulf Cooperation Council Free Trade Agreement. Interna

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The negotiations started in December 2022 and have been taking significant resource as they are moving quickly, with agreement recently reached on a Supply Chains Pillar that could come into effect this year. The Supply Chains Pillar aims to build resilience to shocks but also has ambitious labour commitments, such as establishing a Labour Rights Advisory Board and a process for resolving allegations of failures to uphold labour rights IPEF countries. International relations

International relations

The NZ-Gulf Cooperation Council Free Trade Agreement negotiations were revived in 2022 after they were put on hold in 2009. Labour and sustainability are being discussed as part of the revised negotiations, and we will advise you on the negotiating mandate.

Other developments are likely to arise over the next year, including the commencement of new trade negotiations with labour and sustainability components. New Zealand is hosting the Comprehensive and Progressive Trans-Pacific Partnership meetings this year and a review is being carried out of the Labour Chapter as it has been in place for five years. Also, the NZ-UK FTA has recently come into effect, and will require officials to meet in 2024 and discuss cooperative activities aimed at lifting labour standards among the parties. The NZ-EU FTA may be ratified in the next year and require MBIE officials to discuss cooperative activities and progress towards ratification of the ILO fundamental Conventions.

Asia-Pacific Economic Cooperation Human Resource Development Working Group

The 21-member Asia-Pacific Economic Cooperation (APEC) was established in 1989 to strengthen the Asia-Pacific community and further enhance economic growth and prosperity for the region. APEC provides a key vehicle for regular high level dialogue and enhanced trade and economic integration with New Zealand's key regional partners, including the United States, Canada, China, Korea, Japan, ASEAN and Latin America.

Working Groups carry out APEC's work in specific sectors as directed by APEC Economic Leaders, APEC Ministers, APEC Sectoral Ministers and Senior Officials. There are currently 11 Working Groups, including the Human Resources Development Working Group (HRDWG). HRDWG conducts work programmes to develop human resources on issues ranging from education to labour to capacity building and this work covers multiple ministerial portfolios for New Zealand, including workplace relations, education, social development and employment. MBIE leads the engagement in this working group, and New Zealand's engagement in two of the three networks that sit below it, the Labour and Social Protection Network and the Capacity Building Network (the Ministry of Education leads New Zealand's engagement in the Education Network).