



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	<i>Funding Solutions to Address WorkSafe Baseline Pressures and Whakaari Prosecution Costs</i>	Date to be published	27 May 2024

List of documents that have been proactively released

Date	Title	Author
September 2023	Funding Solutions to Address WorkSafe Baseline Pressures and Whakaari Prosecution Costs	Office of the Minister for Workplace Relations and Safety
4 September 2023	Funding Solutions to Address WorkSafe Baseline Pressures and Whakaari Prosecution Costs: CAB-23-MIN-0420 Minute	Cabinet Office

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information was withheld for the reasons of negotiations, free and frank opinions and commercial information.

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet

Funding Solutions to Address WorkSafe Baseline Pressures and Whakaari Prosecution Costs

Proposal

- 1 This paper seeks your agreement to provide funding to WorkSafe New Zealand from the Health and Safety at Work Levy for two purposes:
 - To support streamlining of its organisational delivery model to meet baseline pressures while maintaining priority front-line services.
 - To meet the remaining external litigation costs of completing the Whakaari/White Island prosecution and appeals process.

Relation to government priorities

- 2 These proposals support the Government's objective of safe and productive work and communities, through ensuring that WorkSafe is appropriately structured to operate sustainably as New Zealand's primary work health and safety regulator, and that it is able to effectively deliver its major Whakaari prosecution without undue impact on core service delivery.

Executive Summary

- 3 WorkSafe New Zealand is funded by the Crown to fulfil its role as New Zealand's primary health and safety regulator – with the majority of that funding coming from the Health and Safety at Work Levy.
- 4 In 2023/24 appropriated funding for WorkSafe totals \$138.5m, including a mix of ongoing funding for core services over which WorkSafe has considerable discretion in its spending decisions, and time-limited or tagged funding for specific priorities and pressures.
- 5 In recent weeks, WorkSafe has notified me and my officials of two urgent cost pressures:
 - A gap between originally budgeted expenditure and available discretionary funding of \$17.8.

- A **Negotiations** shortfall in funding to complete its Whakaari/White Island prosecution, as a result of a long and extremely complex prosecution exhausting previously provided Budget 2021 funding.

6 [Redacted]
Free and frank opinions
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

7 To achieve this, WorkSafe has undertaken an extensive exercise to streamline its activities to enable it to continue to deliver its core functions within its funding envelope. This has enabled them to bridge the identified gap, with minimal impact on frontline services but will necessitate a reduction of 170 FTEs (50 of which are currently vacancies), including through the discontinuation of its Coronial and Victim Support services. It also leaves WorkSafe with limited capacity to manage any costs that might arise from external pressures or from delays in or inability to yield the anticipated savings over the coming year. To address this, I am proposing two funding solutions:

- \$1.006m of ongoing funding to retain WorkSafe’s Coronial and Victim Support services.
- \$7.000m to be placed in contingency to be available to ensure WorkSafe is able to manage any external pressures or issues with realising its anticipated savings without further impacting staffing or service delivery.

8 Additionally, I have identified two opportunities to repurpose small amounts of tagged funding to help meet the ongoing costs of the Whakaari prosecution and am further proposing funding of **Negotiations** be placed in contingency to be drawn upon when that repurposed funding is exhausted. Given the other pressures being managed by WorkSafe and the importance of this prosecution, I do not consider management of the full ongoing costs within baselines is viable.

9 I am recommending that this funding be drawn from the Health and Safety at Work Levy, but there is also an option to fund from the between Budget contingency.

10 I note that as part of the Strategic Baseline Review it was identified, among other recommendations, that WorkSafe needed to strengthen its financial management. WorkSafe has a programme underway to address these recommendations. Additionally, MBIE, as Crown Monitor, has moved WorkSafe’s monitoring status from ‘on watch’ to ‘intensive monitoring’, reflecting heightened concerns over the ability of WorkSafe to meet performance expectations and demonstrate appropriate accountability for funding provided. As part of this process, a Crown Monitor will also be put in place, and WorkSafe’s engagement with this process will be a pre-condition for accessing funding held in contingency.

Background

WorkSafe's Funding and Staffing

Funding History and Status Quo

- 11 WorkSafe New Zealand is funded by the Crown to perform its role as New Zealand's primary work health and safety regulator. The majority of this funding is provided from the Health and Safety at Work Levy¹, and so does not impact directly on the operating allowance. However, in some cases funding is provided from other levy sources (for example, for WorkSafe's energy safety, and hazardous substances activities), or directly from the Crown (for example, in funding WorkSafe's pandemic response activities).
- 12 In 2014/15, its first full year in operation, WorkSafe was provided baseline funding of \$87.061m. Since then, a mixture of further ongoing and time-limited funding has been provided to meet cost pressures, expand, or strengthen aspects of the organisation's core service delivery, or to deliver priority programmes of work. A fuller history of WorkSafe's funding is provided as Annex One, but for the purposes of this discussion, Table 1 below outlines WorkSafe's 2022/23 and 2023/24 funding.

Table 1: WorkSafe 22/23 – 23-24 Funding Appropriated

Funding Area	2022/2023 (\$m)	2023/2024 (\$m)
Core Service Delivery	101.3	101.3
Energy Safety	4.4	4.4
Major Hazards Facility	2.7	2.7
Budget 2022 COVID-19 Response	7.7	-
Budget 2021 Whakaari Litigation	5.6	1.3
Plant & Structures Implementation	5.5	2.6
Harm Prevention	5.0	5.0
Depreciation	8.9	8.9
Licensing system for refrigeration, heating, and air conditioning technicians	0.1	0.1
Budget 2023 PSPA Contingency ²	-	5.4
Budget 2023 Remuneration, Inflation, and ICT Cost Pressures	-	6.8
TOTALS	141.2	138.5

- 13 This highlights a 1.9% decrease in WorkSafe funding in the current year, but it is important to note that the decrease is driven by anticipated decreases in funding for time-limited activities such as COVID-19 enforcement, the Whakaari prosecution and implementation of the Plant and Structures regulatory reforms.
- 14 Additionally, of the funding provided in 2023/24, it is important to note that WorkSafe has limited discretion over several of the line items, given the targeted nature of the funding provided. However, the Core Service Delivery, Harm

¹ The Health and Safety at Work Levy is charged of all New Zealand businesses at a rate of \$0.08 per \$100.00 of pay roll. This funding is placed in a memorandum account, from which it is utilised to fund the work health and safety activities of WorkSafe and other government organisations.

² Expected to be drawn down at or near the full budgeted amount, as required with any underspend returned.

Prevention and Budget 2023 cost pressure funding streams do provide the organisation with what it has identified to be a \$114.1m discretionary budget for the 2023/24 financial year, consisting of 113.1m of appropriated funding and 1.0m of forecast interest earnings.

Other Funding Sources

- 15 As well as its appropriated funding, WorkSafe also receives up to \$15.000m per annum from ACC (funded through the ACC Work Account levies), to carry out agreed workplace injury prevention activities under the Workplace Injury Prevention Framework set up by sections 264A and B of the Accident Compensation Act 2001. It also has a small income from interest and service fees.

WorkSafe Staffing

- 16 While some of its appropriated funding is directed to specific activities, WorkSafe ultimately retains autonomy about staffing decisions – including when to focus expenditure on non-personnel vs personnel costs, when to hire permanent or fixed term staff, and the organisational balance between front-line and other personnel. WorkSafe’s FTE Count since its first year of operation is provided in Table 2.

Table 2: WorkSafe FTEs as at 30 June

FTE Type	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Permanent	336.06	438.63	448.15	471.27	491.17	547.7	574.56	596.43	714.33	719.8
Fixed term	43.64	42.07	37.75	33.35	25.6	27.75	41.22	49.18	41.3	25.6
Total	379.7	480.7	485.9	504.62	516.77	575.45	615.78	645.61	755.63	745.5

The 2021/22 Strategic Baseline Review

- 17 In recent Budget cycles, WorkSafe has identified operational cost pressures and regulatory risks for which it has sought increased baseline funding. While specific pressures have been funded, those broader, and often larger proposals for increased general baseline funding did not progress. In supporting WorkSafe to deliver its Budget proposals MBIE (both in its monitoring capacity and as policy lead for work health and safety) identified a number of concerns with the organisation’s ability to effectively account for and articulate the value of its existing activities in building its case to expand its operational capacity.³
- 18 To address this, in 2021 MBIE commissioned a Strategic Baseline Review of WorkSafe. This was to provide assurance about WorkSafe’s management of resources, inform WorkSafe planning and support MBIE in its advice to Ministers on WorkSafe’s funding needs. The review found that whilst more funding might be needed over the next ten years, levels of sustainable funding for WorkSafe’s activities were yet to be identified and its understanding of its current funding base was limited. This meant that it was not possible to determine

³ These concerns were also identified in two independent reviews of WorkSafe: *Value for Money Review WorkSafe New Zealand* (MartinJenkins, 31 August 2016) and *WorkSafe New Zealand Prioritisation and resource allocation review* (PwC, 2019).

whether high priority areas could be funded from baselines or required new funding.⁴ To determine its funding requirements, WorkSafe has to be able to:

- i. demonstrate clarity of its regulatory role within the Health and Safety system,
 - ii. communicate its strategy clearly, consistently, and simply,
 - iii. show the relationship between what it does, the impacts of this and outcomes it is aiming for, and
 - iv. measure the results and quantify the costs involved to demonstrate value for money.
- 19 To deliver this, WorkSafe, with support from MBIE, is undertaking a substantive work programme to build its capacity in these areas and develop a deeper understanding and communicate a clearer investment-case that connects its strategy, activities, the related resources, and their impacts to outcomes. This work is not complete, however, which was a factor in Treasury not supporting a Budget 2023 bid aimed at organisational capability and capacity building.
- 20 Therefore, this funding request is to address immediate and short-term cost pressures until the Strategic Baseline Review work, and the related Sustainable Funding Review work, is completed.

Funding WorkSafe's Whakaari/White Island Prosecution

- 21 The Whakaari/White Island prosecution (Whakaari) represents the single largest and most complex case taken under the Health and Safety at Work Act 2015. Given the recentness of that Act, it is also precedent setting in the way it seeks to hold duty holders to account.
- 22 Ultimately, 19 charges were laid against 13 organisations and individuals. At the point of writing, charges against one organisation have been dismissed and a further six organisations have plead guilty to charges under the Act. The trial of the remaining six defendants commenced on 11 July 2023, approximately three and a half years after the initial investigation commenced and is expected to run until September or October 2023. Subsequent to the trial a Sentencing Hearing will take place.
- 23 A background of the case is provided as Appendix 2 of this paper.

Budget 2021 Funding of WorkSafe's Litigation Costs

- 24 While WorkSafe's baseline funding is expected to cover its enforcement activity in the normal course of events, it was recognised that this would be the largest and most complex prosecution in WorkSafe's history and that additional funding would be required.
- 25 To this end, a total of \$19.090m was provided through Budget 2021 to support MBIE and WorkSafe's legal and regulatory response to the Whakaari. Of this total, \$16.280m was provided to fund WorkSafe's litigation costs, as detailed in Table 3 below.

⁴ *WorkSafe New Zealand Strategic Baseline Review*, SageBush Strategic Finance Partners, page 10.

Table 3: Budget 2021 Whakaari Litigation funding profile

BUDGET 2021	2020/21	2021/22	2022/23	2023/24	2024/25 and outyears
External Litigation and Support Costs (WorkSafe)	\$5.654m	\$4.914m	\$4.662m	\$1.050m	-

- 26 When seeking this funding it was noted that the Whakaari eruption was an example of a catastrophic event and, while these events are infrequent, they place a disproportionate impact on agency resources. In this case it was noted it could not be funded appropriately within WorkSafe’s baselines. Additionally, as the Whakaari prosecutions may be precedent setting, the litigation costs associated are significantly higher than would be the case when prosecuting under a more well-established Act.

Expenditure to Date

- 27 WorkSafe has spent \$14.164m to 30 June 2023 on the Whakaari prosecution. Expenditure thus far has primarily been on external legal advice, interpreter services and expert advice costs (\$11.978m) with an additional \$1.249m used to fund WorkSafe personnel and overheads as detailed in Table 4 below.

Table 4: Itemised external and internal WorkSafe litigation expenditure to 30 June 2023

Cost Category	Management Report	Total
External	Legal, interpreter & expert advice	\$11,978,327
External	Travel	\$478,834
External	Contractors	\$232,093
External	Facilities management	\$180,803
External	Supplies & services	\$14,821
External	ICT & communication	\$9,985
External	Other operating costs	\$2,412
External	Promotion & advertising	\$2,000
Internal	Personnel	\$388,810
Internal	Depreciation	\$15,125
Internal	Overhead	\$860,563
	Total	\$14,163,773

- 28 The primary cost driver has been the external legal team WorkSafe has engaged to prosecute the case.
- 29 WorkSafe is represented by an experienced King’s Counsel, Barrister, and a prosecution team from Meredith Connell including a partner, two senior associates, and five further solicitors assisting in research and evidence. Hourly rates for this team are detailed in Table 5 below.

Table 5: External Legal Team Hourly Rates

Legal Counsel	Hourly Rate
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King's Counsel	Commercial Information
Barrister	
Partner	
Senior Associate	
Senior Associate	
5 x Meredith Connell solicitors (to assist in research and evidence during hearing)	

- 30 Additionally, another lawyer is also present in court to undertake the electronic courtroom role, and over the last year Meredith Connell has invoiced for 15-20 other fee-earners who assisted in trial preparation.
- 31 Considering these rates, and the uncertainties of trial work, especially for such a large and unprecedented case, Commercial Information
- 32 The Whakaari prosecution is one of New Zealand's largest criminal prosecutions. Its scale, combined with the charges against company directors under the Act, means there is no previous comparator case, either for WorkSafe prosecutions or other criminal cases.
- 33 The closest comparator criminal case would be a large Serious Fraud Office case (i.e. a large financial fraud case), and the cost of these cases ranges between \$5.000m to \$15.000m. However, the nature of costs generated in such financial cases are quite distinct from that being generated in response to the Whakaari tragedy, given the differing technical and legal challenges this case presents.

WorkSafe Funding Pressures

- 34 In recent weeks, WorkSafe have made me and my officials aware of urgent funding pressures associated both with WorkSafe's operating baseline, and specifically with regard to the ongoing costs of the Whakaari prosecution. These are discrete issues, in that one relates to ongoing management of operational costs, and the other is a specific and unique external cost driver. However, the wider financial context created by the former impacts the options available to address the latter, so for this reason I am addressing both issues in a single paper.
- 35 Free and frank opinions
- 36 Nonetheless, WorkSafe is facing substantial operating pressures which it is working to address through streamlining of its activities and management of ongoing costs. This will need to be supported through provision of time limited funding.

WorkSafe Baseline Pressures

- 37 As noted, WorkSafe has \$114.1m in discretionary funding for the 2023/24 year to fund core activities and manage any identified pressures. However, based on current activity, WorkSafe’s initial operating expenses are anticipated to be \$131.9m, which equates to a \$17.8m gap the organisation will now need to meet.
- 38 Given that WorkSafe received cost-pressure funding through Budgets 2019 and 2023 and tagged time-limited funding for specific pressures and emerging work such as its COVID-19 activities, Whakaari prosecution and Plant and Structures implementation, I have asked my MBIE officials to seek clarification from the Chief Executive of WorkSafe about the drivers of this gap.
- 39 The Chief Executive of WorkSafe has advised that the delivery of core services has exceeded funding available in previous years and has been funded by underspends carried forward from earlier years, in anticipation of a sustainable funding bid. However, these underspends are now fully exhausted, and the gap needs to be funded from cost reductions. To maintain 2022/23 service levels and absorb cost pressures, core funding was temporarily utilised from Plant and Structures tagged funding with the intention to reinstate the full Plant and Structures funding prior to the implementation of the regulations. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 40 They key drivers of this gap identified by WorkSafe are detailed in Table 6 below.

Table 6: Drivers of WorkSafe’s 2023/24 budget gap

Driver	Total (\$m)
Use of 22/23 reserves to meet growing costs for core activities	2.5
22/23 Overspend carried into 23/24	2.2
Corporate and management overhead allocation sourced from time-limited funding no longer being available.	4.3
Additional expenditure attributed to: Strategic Baseline Review Implementation; Enterprise Transformation programme; Executive Leadership Team changes; Carcinogens and Airborne Risks work programme.	4.0
Full year impact of business growth from previous years, inflationary pressures, and non-core resource requests	4.0
Negotiations	
Total	17.8

- 41 I note that over the last five years, from 30 June 2018 to 30 June 2023, WorkSafe FTE count increased from 516.8 (491.17 permanent) to 745.5 (719.8 permanent), amounting to a 44.25% increase in total FTEs, and a 46.5% increase in permanent FTEs.
- 42 Over the same period, WorkSafe’s appropriated funding rose by \$47.288m (50.864%). However, \$18.843m of that increase was related to specific-use, time-limited funding scheduled to decrease or cease in the following year, with a total of \$3.935m appropriated for these initiatives in 2023/24.

- 43 WorkSafe is also reviewing its use of ACC provided injury prevention funding to ascertain whether this funding is being used for any baseline WorkSafe activities.
- 44 If WorkSafe does determine it is being used to fund baseline activities, establishing what should happen to those activities will be included in the Strategic Baseline Review and the related Sustainable Funding Review.
- 45 For these reasons, I have sought advice from officials on enhanced monitoring of WorkSafe, and MBIE, as Crown Monitors have indicated that it has now moved WorkSafe's monitoring status from 'on watch' to 'intensive monitoring'. Further discussion on enhanced monitoring approaches commences at paragraph 107 of this paper.

Remaining Costs of the Whakaari Prosecution

- 46 Distinct from these over-arching baseline pressures, WorkSafe is also facing a specific, largely externally driven cost-pressure from the costs of the ongoing Whakaari prosecution.

Remaining Internal WorkSafe Costs

- 47 As detailed in Table 4 above, the prosecution has also driven a range of internal WorkSafe costs, primarily relating to the personnel and overhead costs for a legal advisor, senior inspector, and victim support role. This was initially funded through the Budget 2021 initiative, but any ongoing internal costs are being funded from within WorkSafe baselines from July 2023.

Anticipated Remaining External Legal Costs

- 48 In June 2023 WorkSafe indicated to MBIE that it would not have sufficient Budget 2021 funding to complete the Whakaari case with the remaining funding expected to be exhausted during August/September 2023.
- 49 While at the end of the 2022/23 financial year WorkSafe still retained \$2.1m of its original Budget 2021 litigation funding, it is now estimated that the costs to completion of the prosecution, and appeals process, will amount to between \$4.171m and \$8.496m.
- 50 As was the case with the cost predictions made for Budget 2021, the scale and precedent setting nature of the case make it difficult to predict the exact quantum of remaining costs. However, as the case is now well advanced, it is easier to estimate remaining costs through:
- Assessment of costs generated thus far;
 - Advice from WorkSafe's legal team about the likely duration of the trial, which is expected to close in September 2023, with sentencing anticipated to follow in December 2023 – although there is some possibility this may be delayed until 2024;

- A related judicial review, with a judgment being delivered by the High Court only recently;
- Insights as to the likelihood of a coronial inquest and appeals.

Potential for Cost Minimisation

51 The complex nature, and advanced stage of the legal process mean there will be limited opportunities to minimise these costs without unduly impacting the quality of the WorkSafe prosecution. However, WorkSafe’s Chief Legal Advisor has contacted Meredith Connell and other external legal counsel and has confirmed fees discount or other cost reductions, given the scale of costs to date.

Commercial Information

[Redacted]

52 Free and frank opinions

[Redacted]

Prosecution and Post-Prosecution Cost Estimates

53 On this basis Table 7 provides estimates of both certain, and possible costs to completion of the prosecution, and anticipated post-prosecution activities for which I am seeking funding. The only post prosecution cost sought – appeals – is included on the basis that appeals are an established part of the litigation process and, given the scale and precedent-setting nature of the case, appeals of convictions or sentencing by either WorkSafe or defendants seem likely.

Table 7: Estimated costs for which funding is to be sought

ESTIMATED COSTS	Likely	Possible
Prosecution: Court Proceedings	Negotiations	
Prosecution: Judicial Review		
Prosecution: Sentencing Proceedings		
Prosecution: Travel/Accommodation		
Prosecution: Coronial Inquest		
Post-Prosecution: Appeals		
Total to be sought through this paper		

54 Similarly, Table 8 provides both a low and high-end estimate of additional costs considered either possible or likely, but for which I will am not seeking funding at this stage.

Table 8: Estimated costs for which funding will not be sought at this stage

ESTIMATED COSTS	Lower Estimate	Upper Estimate
Prosecution: Additional costs if sentencing delayed	\$300,000	\$600,000
Post-Prosecution: Commission of Inquiry	\$100,000	\$500,000
Post-Prosecution: Third-party review	\$100,000	\$300,000
Total not being sought at this stage	\$500,000	\$1,400,000

55 I am not proposing to seek funding for:

- expenses to WorkSafe from possible sentencing delays, on the basis that while these costs are possible, I consider them to be of a scale and nature that they should be manageable from within the amount to be sought.
- Expenses to WorkSafe of post-trial reviews, on the basis that either a Commission of Inquiry or other third-party review, would be Government-driven decisions, and it would be more appropriate to consider any financial implications of such reviews as part of those decisions.

Funding Shortfall

56 Taking this approach, the estimated cost to WorkSafe of the remainder of the prosecution and the appeals process is between **Negotiations** and **Negotiations**. When offset by WorkSafe’s remaining Budget 2021 funding, this equates to a shortfall of between **Negotiations** and **Negotiations**, as detailed in Table 9. This shortfall will need to be addressed through new money and/or reprioritisation of existing WorkSafe funding.

Table 9: Additional Funding Required to meet External Costs of Prosecution and Appeals

FUNDING REQUIRED	Lower Estimate	Upper Estimate
Prosecution Related Costs, and Appeals	Negotiations	
Offset by Remaining Budget 2021 Funding	-\$2,100,000	-\$2,100,000
Additional Funding Required	Negotiations	

Addressing these Pressures

Organisational Streamlining to Address Baseline Pressures

Proposed Streamlining of Activity

57 In response to the identified \$17.8m gap in its 2023/24 Budget, WorkSafe has developed a plan to streamline its activity to reduce the gap and remain within its funding envelope. This proposal has been developed using the following criteria:

- Front-line operational capability and activities relating to core statutory responsibilities will be protected wherever possible.
- Reduction of non-personnel costs will be prioritised over staffing reductions wherever possible.
- Funding currently tagged for specific activities will not be repurposed – to avoid simply pushing out current pressure.
- That savings be sustainable in outyears while WorkSafe completes actioning the recommendations of the Strategic Baseline Review.

- 58 The resulting proposal has identified \$17.0m of savings, plus anticipated attrition in 2023/24, rising in outyears due to upfront costs associated with down-sizing. These savings are detailed in Table 10 below.

Table 10: Proposed Savings Through Streamlining of Activities

Cost-Type	Cost Area	Total Savings (\$m)
Non-Personnel Costs	ICT Core (including Licensing)	1.7
	Travel	0.9
	Promotions/Advertising	0.8
	Training	1.8
	Consultancy and Contractors	5.8
	Minor Costs	1.0
	Total	12.0
Personnel Costs	Salary Reductions (7 months)	8.8
	Redundancy (average 3 months)	-3.8
	Attrition	1.0
	Total	6.0
Full Anticipated Savings	Total	18.0

FTE Impact

- 59 A proposal for organisational change would be required to enable the estimated salary reductions (noted above). To achieve the targeted outcome, a total salary reduction of \$8.8m will be required, with WorkSafe estimating that potentially 170 roles will be proposed for disestablishment through consultation (which includes approximately 50 vacancies). Detailed design is continuing and therefore the exact proposed reduction in FTE may change as WorkSafe continues to identify further efficiencies and define any new role requirements.
- 60 For context, WorkSafe’s establishment has grown from 380 FTE at the end of 2013/14, through to 761 FTE as of 1 January 2023. Taking into consideration potential changes identified to date, the proposed operating framework would include approximately 579 FTE. This would equate to an approximate reduction in FTE of 23.9% by December 2023 and would bring FTE numbers broadly into line with WorkSafe’s pre COVID-19 FTE numbers.

Activities Impact

- 61 In identifying these savings, WorkSafe undertook to identify aspects of the organisation’s current work-programme that are not directly linked to its core statutory responsibilities, for which a short to medium-term pause will not unduly affect longer term outcomes (non-enforcement airborne and carcinogens for example), where the activities are non-statutory, and declining (Duty Holder reviews) or where other agencies may be able to address any gaps created (potentially victim support). A full list of activities to be discontinued, reduced, or deferred is provided in Table 11 below.

Table 11: Operational impacts of the savings proposals

Function	Frontline	Proposed change	Proposed impact
Duty Holder Review function	Yes	Discontinue	<ul style="list-style-type: none"> Non-statutory. Function not required and not core.
Coronial and Victim Support Services function	Yes	Discontinue	<ul style="list-style-type: none"> Core work can be supported by other agencies. Delivery of some activity would be absorbed into the inspectorate.
Authorised Officers (Covid 19 Team)	Frontline Support	Discontinue	<ul style="list-style-type: none"> Discontinue function in line with funding cessation.
Innovation Function	No	Discontinue	<ul style="list-style-type: none"> Non-statutory. Function not required and not core. Retain and redeploy engagement capability.
Enterprise Transformation Programme	No	Pausing programme of work	<ul style="list-style-type: none"> Deferral of operating model implementation, spend and initiatives related to Enterprise Transformation.
EPMO and Change function	No	Reduction and consolidation	<ul style="list-style-type: none"> Reduction in roles and service provision.
Behaviour Change and Channels	No	Reduction	<ul style="list-style-type: none"> Reduction in roles and service provision.
Removal of duplicate functions: Data, project resources, admin/support, ministerial and advisory functions	No	Reduce and centralise	<ul style="list-style-type: none"> Work to continue in a centralised and reduced capacity. Removal of duplication will result in efficiencies, potential reduction in service provision in some areas.
Leadership roles	No	Consolidation and reduction	<ul style="list-style-type: none"> Average span of control is currently 1:5 ratio. Reduction in leadership roles will result in increased spans of control.

62 Of these, both increasing managerial and administrative span of control, and the elimination of duplicative functions within the organisation, would be recommended regardless of the current pressures. While some managers impacted will be frontline, those that are warranted inspectors will have the opportunity to be redeployed as inspectors.

63 As presented, WorkSafe’s proposal will impact some frontline staffing in areas such as victim support, and this paper provides an option for providing support to avoid that outcome.

Retained Functions

64 Table 12 details the functions which will remain in place to enable the delivery of WorkSafe’s core statutory responsibilities, noting some functions may have an adjusted service level offering in to enable operation within WorkSafe’s funding envelope.

Table 12: Proposed functions to remain to deliver WorkSafe’s core statutory responsibilities.

PROPOSED FUTURE FUNCTIONS – SOME NON-FRONTLINE SUPPORT FUNCTIONS AT A REDUCED SERVICE LEVEL			
CORPORATE AND ENABLING SUPPORT	DIGITAL AND CHANGE ENABLING SUPPORT	STRATEGY AND INSIGHTS	EQUITY, PARTNERSHIPS, AND INTERVENTION DESIGN
<ul style="list-style-type: none"> • Legal • Ministerial Engagement • Performance Systems • Finance • People and Culture • H&S and Sustainability • Property • Risk & Compliance 	<ul style="list-style-type: none"> • Digital BAU support • IT Systems • IT Security • Digital Delivery • Architecture • Digital Transformation • EPMO and Change 	<ul style="list-style-type: none"> • Strategy • Policy • Regulatory Frameworks • Data & Insights • Intelligence • Research and Evaluation 	<ul style="list-style-type: none"> • Māori Partnerships • Iwi Liaison • Cultural Capability • Pacific Partnerships • Strategic Interventions • Engagement
OPERATIONS			
Inspectorate <ul style="list-style-type: none"> • HSWA • High Hazard • Hazardous Substances • Energy Safety • Extractives • Inspector training and pathways 	Regulatory Advisory and Assurance <ul style="list-style-type: none"> • Mentally Healthy Work • Exposure Risk Management – Carcinogenic and Airborne • Māori Health • Occupational Physician • Human Factors / Ergonomics • QA / QC • Regulatory Practice 	Authorisations and Notifications <ul style="list-style-type: none"> • Notifications & Triage • Authorisations • Exemptions • Compliance Audits • Guidance Products 	

Remaining Consultant and Contractor Expenditure

65 The \$5.8m of savings in contractor and consultancy spend identified represents approximately 46% of WorkSafe’s originally intended \$12.6m of expenditure in contractors and consultants. The remaining functions utilising contractors and consultants are detailed in Table 13 below.

Table 13: Remaining Consultancy and Contractor Expenditure

Function	Budgeted Amount	Notes
Digital Transformation	\$3.4m	Assumption has been used around capitalisation rates for Budgeting purposes. This is the OPEX portion only
Corporate	\$0.4m	Temporary resource in key roles e.g., Organisation Designers and Finance.
Legal	\$1.5m	This excludes legal costs relating to Whakaari
Survey	\$0.6m	Related to survey costs required for SPE measures
Operations	\$0.9m	Related to expert witnesses & translation services
Total	\$6.8m	

66 This is in line with WorkSafe’s pre-COVID 2018/19 expenditure on consultancy and contractors of \$6.5m.

Risks That Could Impact Savings

- 67 There are some scenarios in which it may not prove possible for WorkSafe to deliver the full anticipated savings of this approach for 2023/24, which are captured in table 14 below.

Table 14: Quantifiable risks to savings yielded

Quantifiable downside risks	\$m
1 month delay in implementation impact on proposed salary reductions	1.3
Increase in the average employment term for potential redundancies by 1 year	1.3
Unable to renegotiate lease and need to relocate Head Office	1.0
Not all anticipated attrition occurs	0.5
Not all interest revenue is achieved	0.5
Total	4.6

- 68 Additionally, this streamlining of services does not provide a substantial buffer to address other potential costs that could eventuate, including:
- Responding to a major event.
 - Inability to achieve all salary reductions as planned through consultation.
 - Redundancy costs exceeding those forecast.
 - Costs to retrain staff who are redeployed.
 - Potential personal grievances and related legal costs resulting from the organisational redesign.
 - Additional Costs for activities resulting from the Strategic Baseline Review.

The Requirement for New Funding

- 69 While this proposed streamlining of activities will enable WorkSafe to address most of the identified funding gap for 2023/24 and beyond, there are two outstanding issues for which new funding will be required:
- The approach will still impact some frontline and priority roles – for example through the discontinuation of WorkSafe’s victim support services.
 - The proposed approach leaves WorkSafe with no reserves to meet any delays or challenges in yielding the intended savings, and any unanticipated external pressures will result in the organisation operating at a deficit in 2023/24 and potentially beyond
- 70 Outside of repurposing considerable elements of tagged funding, which would only push-out operational funding pressures, there are no practical opportunities to address these remaining pressures without unduly affecting WorkSafe’s core service delivery. On this basis, it is my view that conditional funding support for this organisational streamlining be provided. This will be the first step in a

longer-term solution which also includes the organisation's response to the Strategic Baseline Review, and the introduction of a Crown Monitor.

Options for Addressing the Whakaari Prosecution Funding Shortfall

- 71 Should the quality and thoroughness of the Whakaari prosecution be affected by a shortfall in funding, this could have significant implications for public confidence in New Zealand's health and safety system, and tourism sector (given both the nature of the activity during which harm occurred, and the significant international interest in the case).
- 72 For these reasons, I have considered several options for new government investment, underwritten by the Health and Safety at Work Levy and reprioritisation of tagged funding WorkSafe currently holds.
- 73 Accepting that further costs will be incurred through the prosecution and appeals process, there are three broad options for addressing these:
- Funding from within WorkSafe's existing operational baselines.
 - Repurposing WorkSafe funding previously tagged for other priorities.
 - Providing new funding, recouped by the Crown from the Health and Safety at Work Levy memorandum account.

Funding from Within WorkSafe's Existing Operational Baselines

- 74 Noting the Minister of Finance's 9 June 2023 letter to Ministers stating that only the most pressing proposals that cannot be funded through baselines are put forward for out-of-cycle funding, I have assessed the possibility of WorkSafe meeting these costs within its existing baselines. To this end, WorkSafe will be meeting any ongoing internal costs associated with the prosecution (which had previously been funded through the Budget 2021 initiative) from within baselines.
- 75 However, I do not consider it feasible for WorkSafe to meet the ongoing external prosecution and appeal costs detailed in Table 7 above. This would require substantial reprioritisation within WorkSafe's existing operational baselines, essentially generating a new baseline pressure for an organisation concurrently working to make substantial 2023/24 savings as noted elsewhere in this paper. This would likely drive an increased FTE reduction – likely impacting some frontline service.
- 76 Additional to this, the uncertainty around final costs would make reprioritisation of the full costs challenging. To avoid unnecessarily ceasing activities, reprioritisation would not be undertaken until costs were certain, and WorkSafe is unlikely to be able to efficiently reprioritise additional funding at short notice should developments in the case drive costs towards the high end of the estimate.

Repurposing Tagged Funding

- 77 As an alternative to reprioritising within existing operational baselines, there is also the opportunity to repurpose unspent funding previously tagged by Cabinet and/or joint-Ministers for specific purposes. WorkSafe is currently in receipt of several tagged funds, from which some or all funding could be ‘untagged’ to enable its use to fund the prosecution and appeals process – although in many cases WorkSafe has already made commitments relating to unspent funding.
- 78 I have not proposed this sort of repurposing to address broader baseline pressures as it could both push out any current baseline pressure and because it creates a precedent that would not be sustainable. However, I do consider that a small amount of prioritisation for a specific pressure is justifiable and prudent.
- 79 The scale and purpose of these areas of tagged funding from which funding may be repurposed are as follows:
- *Plant, Structures, and Hazardous Work Regulatory Reform:* In Budget 2022, WorkSafe received \$10.520m over four years to implement the anticipated Plant, Structures, and Hazardous Work regulatory reform. However, those reforms are now delayed until post-election and, as at 30 June 2023, \$6.924m remains available. Cabinet could elect to repurpose some or all of this funding to meet the costs of prosecution and appeal. However, this would mean that WorkSafe would be limited in its ability to effectively implement an important new regulatory regime. This would have substantial implications for the work health and safety system and could drive a future funding request or factor into WorkSafe’s sustainable funding case as part of the Strategic Baseline Review. For these reasons, while some element of this funding could be reprioritised while still leaving WorkSafe sufficient resource to complete implementation of the regulatory reforms, I do not propose fully redirecting the available tagged funding.
 - *Public Sector Pay Adjustment Contingency:* In Budget 2023 a tagged contingency of up to \$5.409m in 2023/24 was put into place to fund an impending pay settlement. WorkSafe expect to draw down the required funding in the coming months, and any underspend of PSPA contingencies is expected to be returned to the Crown meaning this is not a candidate for reprioritisation.
 - *Budget 2023 Cost Pressure Funding:* In Budget 2023, WorkSafe received \$6.791m in 2023/24 for remuneration, inflation, and ICT cost pressures. In principle, some of this funding could be repurposed with Cabinet agreement. However, this would expose WorkSafe to the operating pressures the original Budget decision was intended to mitigate and result in the same challenges discussed above and elsewhere regarding reprioritisation and the management of cost pressures.
 - *Harm Prevention Funding:* In Budget 2019, WorkSafe received \$5.000m in 2023/24 for harm prevention activities. This has been committed for functions and programmes such as WorkSafe’s Kaimahi Hauora team, responsible for improving work-related health capability, its Carcinogens Airborne Risk programme including Accelerated Silicosis, and its Mentally Healthy Work Team responsible for improving work-related mental health. However, these

activities are already expected to be streamlined as part of the wider baseline funding response detailed in this paper, meaning it cannot be reprioritised towards Whakaari.

- *Budget 2022 COVID-19 Response Funding:* In Budget 2022, WorkSafe received \$7.716m in operational funding⁵ for the 2022/23 financial year to enable it to deliver a suite of regulatory interventions under the COVID-19 Public Response Act 2020⁶. While this funding was not provided out of the COVID Response and Relief Fund, it was nonetheless paid out of the operating allowance, rather than the Health and Safety at Work Levy, due to the nature of the activities to be funded. WorkSafe advises that it spent \$4.308m of this funding in the 2022/23 financial year, with the remaining \$3.408m carried over until 2023/24. This includes, \$2.064m budgeted towards the remaining work and winding down of WorkSafe’s COVID-19 functions, with the remaining \$1.344m reserved for other costs, including costs to disestablish the COVID team, and other possible expenditure arising. Whilst there is some opportunity for reprioritisation within this, it is proposed that the Covid Team be disestablished quicker than initially planned with most of that funding to be used in bridging the 2023/24 funding gap.

Providing new funding through the Health and Safety at Work Levy

- 80 The final option is to provide new funding to WorkSafe to complete the prosecution and appeals process. As this funding would be sourced from the Health and Safety at Work Levy (the Levy), the additional expenditure would not impact the operating allowance.
- 81 The Levy memorandum account is currently forecast to have a \$32.335m year-end surplus - sufficient to fund WorkSafe’s lower or upper cost estimates. While this will have a substantial impact on the Levy’s annual surplus/deficit in 2023/24, the account itself will remain in surplus. As the levy is charged on payroll it is linked to economic activity and so annual revenue fluctuates. However, given current forecasts and the extent of the current surplus in the memorandum account it is unlikely that such changes would affect the ability to fund the proposals in this paper.
- 82 This would be an appropriate use of the Levy in that one of the justifications for retaining surplus in the memorandum account is to provide the Crown with the capacity to fund unexpected cost pressures or high-priority initiatives, of which the ongoing Whakaari prosecution is both. Additionally, I propose that the funding be provided via a tagged contingency from which WorkSafe would draw funding on an as-required basis, negating any risk of over-appropriation that is possible given the uncertain nature of future costs.
- 83 It is important to note that there are a number of substantial calls on the levy expected in the coming years. These include any resourcing decisions resulting from WorkSafe’s Strategic Baseline Review and Sustainable Funding Review, and any requests for funding from Waka Kotahi, should it receive a designation

⁵ An additional \$1.500m of capital was also provided as part of this initiative.

⁶ Since amended through the COVID-19 Public Health Response Amendment Act 2021, which preceded Budget 2022 decisions, and the COVID-19 Public Health Response (Extension of Act and Reduction of Powers) Amendment Act 2022.

as a regulator under the Act. These factors, along with any shifts in revenue projections over the coming year, will all have some impact on potential advice developed during a planned 2024/25 review of the Levy. However, the time-limited nature of any Whakaari-related funding means the long-term impact of any such funding is relatively limited. This is more fully detailed in the *Financial Implications* section of this paper.

Recommended Approaches

Supporting WorkSafe's Organisational Streamlining

- 84 On balance, I consider WorkSafe's proposal to realign its operating model more closely to its available discretionary funding will serve the organisation in good stead as it works towards delivering on the findings of the Strategic Baseline Review.
- 85 The Review was clear that WorkSafe is performing its regulatory role but has work to do to achieve a sustainable funding model and clarity about the outcomes its funding is delivering for New Zealanders.
- 86 That meant that WorkSafe was always going to need to make changes to set it on a sustainable funding track, and that this would have some impact on staff.
- 87 So, while I believe this work serves as an important step in laying the foundations for WorkSafe's ongoing sustainability, I also recognise that the proposal leaves unmet pressures, presents cashflow issues, and will leave the organisation with limited ability to respond to any newly emerging pressures or major incidents without seeking further funding.
- 88 It is for this reasons that I am proposing we provide some short-term investment to ensure these important changes do not compromise the delivery of frontline services that keep workers in New Zealand safe and support victims when things do go wrong.
- 89 Specifically, this will mean providing targeted funding for:
- Retaining priority and front-line FTE in Coronial and Victim Support Services (\$1.006m - ongoing)
 - Providing a tagged contingency to enable management of risks (\$7.000m) – while refining its proposal, WorkSafe did provide an option to mitigate some of this potential risk-associated cost through identification of further salary savings, but while recognising that possibility, I have proposed this amount as a mechanism to limit further staffing impacts.
- 90 I am proposing that this be funded through the Health and Safety at Work Levy.
- 91 I am making these funding recommendations on the basis that WorkSafe has provided assurances that it will be able to live within its currently allocated funding in 2024/25 while still delivering on its core statutory responsibilities. This will create some trade-offs and risks over time, which WorkSafe will advise Ministers of if and when they eventuate.

- 92 This proposal also recognises that as WorkSafe strengthens its operating model and corporate capabilities in response to the Strategic Baseline review, requests for longer term sustainable funding to strengthen delivery will be forthcoming.
- 93 This funding would be provided in contingency, and I have sought advice from MBIE and Treasury on enhanced monitoring associated with this expenditure.

The impacts of not funding this approach

- 94 Without the funding proposed in this paper, WorkSafe will be unable to operate within its funding envelope while still retaining its Coronial and Victim Support Service. Additionally, it will be unable to manage the costs of delays in its savings exercise, or potential external pressures, as detailed in paragraphs 66-67. While the uncertainty of these pressures makes it difficult to predict the exact impacts, any decrease in expected savings or increase in costs would likely necessitate both further redundancies and potential service declines. Given the degree of savings already proposed, any further streamlining would be increasingly likely to impact frontline staff and WorkSafe's core statutory activities as New Zealand's primary work health and safety regulator.

Meeting the Remaining Costs of the Whakaari Prosecution and Appeals Process

- 95 While the costs to completion of the prosecution and appeals process detailed in this paper reflect best available estimates at time of writing, the ultimate costs remain uncertain. I therefore consider it prudent that any approach to funding the ongoing process provide for the possibility that costs may settle at the high-end of the estimated range. On this basis I propose an approach utilising all three available funding streams to meet the high-end estimate of remaining costs of prosecution and appeals of **Negotiations**

Repurposing Tagged Funding

- 96 While WorkSafe has access to sufficient tagged funding to meet the ongoing costs of prosecution and appeal it is difficult to assess the appropriate amount to un-tag, and fully funding these costs through this approach could substantially impact future service delivery and/or necessitate further funding requests at a later date. However, based on an assessment of the available funding streams, I do recommend that \$1.000m be repurposed, as follows:
- Plant, Structures, and Hazardous Work- \$0.500m: Given the delays thus far and uncertainty about exact timing for next steps on this work post-election I propose repurposing a small amount of planned funding towards the Whakaari prosecution. I believe that this will not unduly affect WorkSafe's ability to implement the new regulations, and there will be sufficient time to revise its approach accordingly given the reforms themselves are unlikely to be in place until 2024.
 - COVID-19 Response Funding - \$0.500m: Given that WorkSafe's COVID-19 response work is being wound down, I propose repurposing this amount of their remaining Budget 2022 funding towards the Whakaari prosecution.

Providing New Funding through the Health and Safety at Work Levy

97 There are sufficient reserves in the Levy memorandum account to fund the remaining costs of prosecution and appeal without substantial impact on the long-term account position, and without impacting the operating allowance. On this basis, I propose that the remainder of the high-end shortfall estimate of costs for the prosecution and appeal **Negotiations** be placed in a tagged contingency funded through the Levy. WorkSafe would draw down funding with approval of joint Ministers as costs eventuate following exhaustion of any untagged or reprioritised funding.

Summary of the Proposed Approach

98 This multi-source approach is summarised in Table 15.

Table 15: Recommended approach to meeting ongoing prosecution and appeal costs

Funding Source	Total Contribution
Repurposing of Tagged Plant, Structures and Hazardous Work funding	\$0.500m
Repurposing of Budget 2022 COVID-19 funding ⁷	\$0.500m
New Levy Funding (Tagged Contingency)	Negotiations

99 This approach has several benefits. Specifically, it:

- Provides both WorkSafe and the Crown with certainty about the scale of reprioritisation and repurposing of tagged funding necessary, while minimising the longer-term system impacts that would result from fully funding the prosecution and appeals by either mechanism
- Provides sufficient contingency to ensure that costs can be met should the high-end of WorkSafe’s estimates eventuate, while ensuring there is no subsequent underspend if that is not the case
- Will have no impact on the operating allowance, and a short-term impact on the Health and Safety at Work Levy memorandum account.

Alternative Approaches Considered

100 For the reasons already discussed in this paper, I do not consider it feasible to allow a scenario where WorkSafe is required to undertake further cost-cutting that would impact core operations or the quality of the Whakaari prosecution. However, I have considered a number of alternative approaches, to meeting these costs, as detailed below.

Only meeting the low-end of WorkSafe’s Ongoing Costs Estimate

101 I have considered securing funding only to meet the low end estimate of WorkSafe’s remaining costs. However, I do not believe this would be prudent, given the uncertainty about final costs. It is for this reason that I am instead proposing that any new funding be placed in a tagged contingency, ensuring a

⁷ Assumes separate agreement to WorkSafe retaining remaining Budget 2022 funding (or the same quantum in new Levy funding) for the 2023/24 financial year.

high-end cost outcome can be met, without appropriating more money than is ultimately required.

Meeting Full Cost Through Reprioritisation of Existing Operational Baselines

- 102 I have considered the possibility of requiring WorkSafe to meet any funding shortfall through internal reprioritisation of existing baselines, but have decided against this for five reasons however:
- i. WorkSafe has already taken, and will take further, significant cost reduction actions to maintain operational delivery within baseline funding.
 - ii. Meeting the full high-end estimate through internal reprioritisation would significantly impact WorkSafe's core service delivery, and drive costs associated with building that capacity back up once this short-term financial pressure has been met.
 - iii. The uncertainty of the amount of reprioritisation required could result in inefficient over- or under-reprioritisation which could drive further costs or unnecessary impacts on service delivery.
 - iv. WorkSafe is currently undergoing a comprehensive sustainable funding review, which will be made more complex, and potentially be inhibited by, a need to meet this short term pressure in conjunction with developing an approach to long-term sustainability as an organisation.

Full Reprioritisation of Tagged Plant and Structures funding

- 103 I have considered the possibility of reprioritising the full allocated amount of Plant and Structures funding to meet the remaining costs of the prosecution and appeal. While this would be possible, I have decided against this for two reasons:
- i. It will simply push out any funding pressure until such time as the new regulations are in place, potentially putting their effective implementation at risk.
 - ii. It would be at odds with Cabinet's original decision to fund the Whakaari prosecution, which recognised the scale and precedent-setting nature of this case would make it difficult for WorkSafe to fund an effective prosecution from within its operational baselines. I do not believe this has changed.

Full Reprioritisation of Unspent Budget 2022 COVID-19 Funding

- 104 I have considered recommending reprioritisation the entire unspent portion of WorkSafe's COVID-19 funding received through Budget 2022. However, while this would meet a greater portion of the required funding than what I am recommending, I have not pursued this option given much of this funding is already committed to the winding down of WorkSafe's COVID-19 enforcement activities, either as initially planned or as part of the redesign programme to remain within baseline funding for 2023/24.

Seeking Funding from the Between Budget Contingency, rather than the Health and Safety at Work Levy

- 105 In developing the proposals contained in the paper, I gave some thought to seeking funding from the between-Budget contingency, rather than the Health and Safety at Work Levy. However I have decided against this on the basis that:
- The activities to be funded all relate to the delivery of WorkSafe’s responsibilities under the Health and Safety at Work Act 2015, and are therefore appropriate to fund through the Levy
 - While money provided through the Levy arrives from a different sources, the same checks and balances about use are in place as for normal Crown expenditure, and in any case, the conditionality on release of funding from the contingency will provide added surety about the use of this funding.
 - There is sufficient surplus in the Levy Memorandum Account to meet these short-term funding needs without exhausting the account or unduly impacting funding availability in the long term.
 - Funding these pressures through the Levy will not impact the operating allowance.

Monitoring of WorkSafe

- 106 In supporting my consideration of the issues addressed in this paper both MBIE, as Crown Monitors, and Treasury have provided me with advice regarding the need to provide enhanced monitoring of WorkSafe’s financial performance as it resolves its current funding pressures and works to address the recommendations of the Strategic Baseline Review.
- 107 To this end the MBIE Crown Monitors have moved WorkSafe’s monitoring status from ‘on watch’ to ‘intensive monitoring’, reflecting heightened concerns over the ability of WorkSafe to meet performance expectations and demonstrate appropriate accountability for funding provided. Written notification of this, and its implications, will be provided to the Chair.
- 108 ‘Intensive monitoring’ generally results in increased reporting requirements and MBIE Crown Monitors envisage that access to all Board papers, including those provided to the Audit and Risk Board sub-committee, will be necessary.
- 109 Given the significance of the challenges currently faced by WorkSafe, in order to provide satisfactory levels of assurance on progress, MBIE’s Crown Monitors also propose:
- To contract an independent advisor for the Crown, with expertise in business improvement, restructuring and recovery, business re-engineering and cost reduction.
 - That WorkSafe focus on Strategic Baseline Review recommendations that relate to managing within its current funding envelope.

- 110 The Crown Monitor will provide regular, independent, updates to the Treasury, Minister of Finance, and responsible Minister, on WorkSafe’s progress towards the full implementation of the Strategic Baseline Review recommendations and meeting performance expectations within its funding envelope.

Cost-of-living Implications

- 111 The proposals contained in this paper are not expected to have any implications for the cost of living.

Financial Implications

Implications for the Crown

- 112 The new money sought through this proposal will have an impact on OBEGAL and net debt, but this will be met by the Health and Safety at Work levy memorandum account and will therefore not impact on the operating allowance. It does, however, increase total Crown spending.

Implications for the Health and Safety at Work Levy

- 113 As detailed in Table 16, the Levy memorandum account currently has sufficient surplus to fund either WorkSafe’s lower or upper cost estimates. While this will have a substantial impact on the memorandum account’s annual surplus/deficit in 2023/24, the account itself will remain overall in surplus unless there is a substantial drop in revenue over the coming years.

Table 16: Impacts on the Health and Safety at Work Levy Memo Account of Providing Further Funding

Increase	Impact	2023/24	2024/25	2025/26	2026/27
Status Quo Forecast as at June 2023	Annual Surplus	-3,370	7,073	12,815	19,609
	EoY Balance	32,335	39,408	52,223	71,832
Levy Position if All Proposals Funded	Annual Surplus	Negotiations			
	EoY Balance				

- 114 MBIE periodically review the Health and Safety at Work Levy settings to provide assurances that the Levy Rate is sufficient to provide required revenue for anticipated Government work health and safety activities, while not generating an unnecessarily large surplus. The next review scheduled for the 2024/25 financial year.

Legislative Implications

115 The proposals contained in this paper will not require legislative change.

Impact Analysis

Regulatory Impact Statement

116 The proposals contained in this paper will have no regulatory impact and thus do not require a Regulatory Impact Statement.

Population Implications

117 There are no specific population group impacts expected from the proposals contained in this paper.

Human Rights

118 There are no human rights issues arising from the proposals contained in this paper.

Use of external Resources

119 The proposals in this paper seek funding for the costs to WorkSafe of the external legal counsel that has been engaged to prosecute WorkSafe's Whakaari case. Their advice on billing, anticipated hours to be worked, and the likely timeframe to completion of the case have informed the costing contained in this paper, but they had no direct involvement in the drafting of this paper, or the development of its recommendations.

Consultation

120 WorkSafe New Zealand and the Treasury have been consulted in the development of this paper. The Department of the Prime Minister and Cabinet was informed.

Communications

121 I do not anticipate any formal communication of the Whakaari elements of this decision, given that the funding sought is to continue an already well publicised WorkSafe prosecution. I do anticipate communications will be required in relation to the anticipated redundancies to be made by WorkSafe. This communication will likely focus on the benefits of ensuring New Zealand's primary work health and safety regulator is operating in a sustainable fashion and highlighting that the decisions made effectively unwind recent FTE growth, much of which did not have long term funding attached.

Proactive Release

122 I intend to release this Cabinet paper within 30 business days of decisions being confirmed by Cabinet, with some potential redactions where material relates to:

- Costings and funding in contingency for the Whakaari prosecution that may be considered commercially sensitive.
- Information related to redundancy levels under consideration.
- Information related to salaries.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 **note** that WorkSafe has identified a gap of \$17.800m between its initial operating budget for 2023/24 and its available discretionary funding
- 2 **note** that to address this, WorkSafe has identified \$18.000m of savings, including \$12.000m in non-personnel savings, and \$6.000m in personnel savings (rising in outyears as the full year savings in personnel costs take effect)
- 3 **note** that this will result in some reductions in service, but frontline services and core-statutory activities have been protected wherever possible
- 4 **note** that this will result in an organisational FTE reduction of 170 roles through consultation (currently approximately 746), but the organisation is currently carrying approximately 50 vacancies
- 5 **note** that while this approach addresses all of WorkSafe’s identified 2023/24 pressures, there are a number of potential factors which could have quantifiable impact on the extent of savings that can be yielded in 2023/24 and no operating ‘cushion’ within which do manage those, and other less immediately quantifiable risks to the savings package
- 6 **note** that to manage these risks internally would require further FTE reductions
- 7 **agree** to establish a tagged contingency of \$7.000m, to be drawn down through request to the Minister of Finance and Minister for Workplace relations and Safety to help address these pressures if they eventuate

Tagged Contingency: Supporting WorkSafe Service Realignment (\$m)	2023/24	2024/25	2025/26	2026/27	2027/28 and outyears
Operating Contingency	7.000	-	-	-	-
Capital Contingency	-	-	-	-	-
Total	7.000	-	-	-	-

- 8 **agree** that the expiry date for the above tagged contingency be 1 February 2025
- 9 **note** that I am seeking advice on appropriate management of this contingency to provide surety about expenditure

10 **note** that included in WorkSafe’s proposed savings would be the discontinuation of its Coronial and Victim Support Services, established in the wake of the Whakaari tragedy

11 **agree** to provide ongoing funding of \$1.006m to enable the retention of WorkSafe’s coronial and victim support service

\$m - increase/(decrease)					2026/27 and Outyears
	2022/23	2023/24	2024/25	2025/26	
Non-Departmental Output Expenses:					
Workplace Relations and Safety - Workplace Health and Safety	-	1.006	1.006	1.006	1.006
Total Operating	-	1.006	1.006	1.006	1.006
Total Capital	-	-	-	-	-

12 **note** that as part of Budget 2021, WorkSafe New Zealand received, \$16.280m in Crown funding litigation costs arising from the Whakaari/White Island Tragedy

13 **note** that while WorkSafe would normally fund such prosecutions from within its operational baselines the scale, and precedent-setting nature of this litigation led Cabinet to agree that new money was warranted for this purpose

14 **note** that as at 30 June 2023, WorkSafe had spent \$14.164m on the Whakaari prosecution, and still retained \$2.100m

15 **note** that WorkSafe now estimates costs to completion of the prosecution, and appeals process will amount to between **Negotiations** and **Negotiations** and this paper proposes a funding solution to address these costs

16 **note** that additional costs of between \$0.500m and \$1.400m are also possible if sentencing is delayed or a Commission of Inquiry or third party review is established post-prosecution but that I am not seeking funding to meet these potential costs at this stage

17 **note** that of the WorkSafe will meet \$2.100m of the costs to completion of the prosecution, and appeals process through use of its remaining Budget 2021 funding

18 **agree** to reprioritise:

- i. \$0.500m of funding provided in Budget 2022 for WorkSafe’s COVID-19 enforcement activities; and

- ii. \$0.500m of funding provided in Budget 2022 for implementation of now delayed plant, structures, and hazardous work regulatory reform

to help meet the costs to completion of the prosecution, and appeals process

- 19 **agree** new funding for WorkSafe of **Negotiations** to meet the balance of the high-end estimate of costs to completion of the prosecution and appeals process

Tagged Contingency: Remaining Costs of the Whakaari Prosecution (\$m)	2023/24	2024/25	2025/26	2026/27	2027/28 and outyears
Operating Contingency	Negotiations	-	-	-	-
Capital Contingency	-	-	-	-	-
Total	Negotiations	-	-	-	-

- 20 **agree** that this new funding be provided in a tagged contingency to be drawn down upon the approval of the Ministers of Finance and Workplace Relations and Safety, once the other funding sources described in recommendation 18 have been exhausted
- 21 **agree** that the expiry date for the tagged contingencies detailed in recommendations 7 and 19 be 1 February 2025
- 22 **authorise** the Minister for Workplace Relations and Safety and the Minister of Finance to place whatever conditions on release of funding the contingencies proposed in recommendations 7 and 19 are deemed appropriate
- 23 **agree** to fund these proposals through the Health and Safety at Work Levy
- 24 **note** that the funding sought through this proposal will have an impact on OBEGAL and net debt as the funding will be provided through the Health and Safety at Work Levy memorandum account, which is in sufficient surplus
- 25 **note** that the MBIE Crown Monitors have moved WorkSafe’s monitoring status from ‘on watch’ to ‘intensive monitoring’
- 26 **note** that additional enhanced monitoring is proposed to support WorkSafe through its change process and provide surety to the Crown
- 27 **note** that intensive monitoring will require increased reporting requirements and MBIE Crown Monitors envisage that access to all Board papers, including those provided to the Audit and Risk Board sub-committee, will be necessary
- 28 **note** that given the significance of the challenges currently faced by WorkSafe, in order to provide satisfactory levels of assurance on progress, MBIE’s Crown Monitors also propose:

- i. To contract an independent advisor for the Crown, with expertise in business improvement, restructuring and recovery, business re-engineering and cost reduction.
 - ii. That WorkSafe focus on Strategic Baseline Review recommendations that relate to managing within its current funding envelope.
- 29 **note** that the Crown Monitor will provide regular, independent, updates to the Treasury, Minister of Finance, and responsible Minister, on WorkSafe’s progress towards the full implementation of the Strategic Baseline Review recommendations and meeting performance expectations within its funding envelope
- 30 **agree** that this enhanced monitoring be a condition of any funding for WorkSafe agreed through this paper.

‘Authorised for lodgement’.

Hon Carmel Sepuloni

Minister for Workplace Relations and Safety

Appendices

Appendix 1: WorkSafe Funding Appropriation History

Appendix 2: Background on WorkSafe's Whakaari Prosecution

Appendix 1: WorkSafe Funding Appropriation History

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

Notes:

- This table captures appropriated funding and will not perfectly align with Budgeting totals provided by WorkSafe.
- WorkSafe also earns interest and rental funding, and harm prevention funding provided through ACC.
- Budget 2022 funding for the PSPA has yet to be drawn down, but it is expected this will occur in the coming months – likely at or near the total in contingency, with any unspent Money to be returned.

Appendix 2: Background on WorkSafe’s Whakaari Prosecution

Following the December 2019 Whakaari/White Island tragedy (Whakaari), WorkSafe undertook an extensive investigation, which examined the duties of approximately 50 Persons Conducting a Business or Undertaking (PCBUs or PCBU groups)⁸ to identify potential failures under the Health and Safety at Work Act 2015 (the Act) on the part of each PCBU to comply with those duties. External legal advice was sought from Meredith Connell on the test for prosecution with respect to the evidence set out in the investigation reports and the recommended enforcement outcomes. The advice was prepared with assistance from, and reviewed by, Kristy McDonald, KC. Meredith Connell also met with and discussed matters with the investigations team for the purposes of preparing the advice.

A panel of WorkSafe Executive Leadership Team members was convened to support the decision-making processes to determine which PCBUs would be charged.

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

- [Redacted] Five parties⁹ were charged for failing to comply with a duty to ensure the health and safety of workers on Whakaari.¹⁰
- [Redacted] Nine parties¹¹ were charged failing to ensure the health and safety of tourists on Whakaari.¹²
- [Redacted] Whakaari Management Limited, the company responsible for managing and administering Whakaari including managing access to the island, was charged both as the PCBU that manages or controls a workplace, and alternatively for failing to ensure the health and safety of tourists on Whakaari.¹³
- [Redacted] Andrew, James and Peter Buttle (the Buttlés) are joint directors and shareholders of Whakaari Management Limited and were each charged in relation to allegations they breached their duty to carry out due diligence as officers.

Legal Precedent

[Redacted] Free and frank opinions
[Redacted]

[Redacted] Free and frank opinions
[Redacted]
[Redacted]
[Redacted]
[Redacted]

⁸ Investigation reports were prepared for approximately 20 PCBUs.

⁹ Institute of Geological and Nuclear Sciences Limited, White Island Tours Limited, Volcanic Air Safaris Limited, Aeriús Limited, and Kahu NZ Limited.

¹⁰ An offence under section 48 of the Act in relation to a breach of the primary duty under section 36(1)(a) HSWA.

¹¹ Whakaari Management Limited, National Emergency Management Agency, White Island Tours Limited, Volcanic Air Safaris Limited, Aeriús Limited, Kahu NZ Limited, Inflite Charters Limited, I D Tours New Zealand Limited and Tauranga Tourism Services Limited.

¹² For an offence under section 48 of the Act in relation to a breach of the primary duty under section 36(2).

¹³ Pursuant to the duty under section 37, as an alternative charge to the one it faces under section 36(2).

[Redacted] Free and frank opinions
[Redacted]
[Redacted]
[Redacted]

Free and frank opinions

[Redacted] Free and frank opinions
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Current Case Status

At the point of writing, charges against one organisation have been dismissed and a further six organisations have plead guilty to charges under the Act. The trial of the remaining six defendants commenced on 11 July 2023, approximately three and a half years after the initial investigation commenced and is expected to run until September or October 2023. Subsequent to the trial a Sentencing Hearing will take place.