



BRIEFING

Work Health and Safety System Issues and Opportunities

Date:	18 January 2024	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2324-1207

Action sought		
	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations and Safety	Note the key areas for improving work health and safety include fixing regulations and improving WorkSafe's performance. Note we will brief you further to support you in developing a work programme.	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Anna Clark	General Manager, Workplace Relations and Safety Policy	s 9(2)(a)	
Hayden Fenwick	Manager, Health and Safety Policy	s 9(2)(a)	✓
Susan Adams	Principal Advisor, Health and Safety Policy	s 9(2)(a)	

The following departments/agencies have been consulted
WorkSafe New Zealand

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

To support you in developing a work programme for the Workplace Relations and Safety portfolio, this paper provides you with:

- a brief overview of the work health and safety regulatory system
- initial advice on key areas where we believe policy settings could be improved, and
- an outline of how we propose to brief you further on work programme options.

Executive summary

New Zealand's work health and safety regulatory system is designed around businesses and workers knowing how to best manage work health and safety risk.

Managing this risk is harder for some, such as small businesses and higher risk industries, and some workers and industries are disproportionately represented in work-related injuries, illnesses and deaths. For an efficient regulatory system, businesses must be supported by regulations that are proportionate to the risk, by clear guidance and an effective regulator.

Your priority for the work health and safety component of the Workplace Relations and Safety portfolio is reforming health and safety law and regulations. To support this priority, the Ministry of Business, Innovation and Employment (MBIE) has identified two key areas for improving the work health and safety regulatory system:

- Outdated, incomplete and overly complex regulations continue to create uncertainties and inefficiencies for businesses and WorkSafe, in areas of risk that significantly contribute to New Zealand's high rates of work-related harm.
- WorkSafe New Zealand's performance is of concern. We are working with WorkSafe to improve its focus supporting New Zealand businesses to manage work health and safety risk. MBIE has provided you with advice on WorkSafe's performance [Briefing 2324-0988 refers].

You have choices on where we should best prioritise our efforts. To support your decisions on your detailed portfolio priorities and work programme, we propose to brief you further on the following areas of opportunity at the appropriate time:

- Priority areas for reforming health and safety regulations, including:
 - reforming hazardous substances regulations – with wide coverage of acute, chronic and catastrophic risks, and high complexity and costs for businesses and WorkSafe
 - modernising outdated regulations for plant (ie machinery and tools), structures and work at height – with the potential for the quickest regulatory gain and addressing the area of greatest acute harm and death.
- Supporting development of renewables including the new uses of hydrogen (supporting cross-portfolio priorities for the Energy and Resources portfolios).

- Improving New Zealand's work health and safety performance through better measurement, data and insights to improve decision-making across the regulatory system.

These areas of regulatory focus, especially if underpinned by improved system measurement and data, align with the Government's wider priorities for improving the quality of regulation.

We look forward to discussing with you how you would like to structure and prioritise your work programme for work health and safety.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** two main areas of opportunity for improving New Zealand's work health and safety regulatory system and reducing work-related harm and costs:

- better supporting businesses to manage their work health and safety risks by fixing outdated, incomplete and overly complex regulations
- improving WorkSafe New Zealand's performance [Briefing 2324-0988 refers].

Noted

- b **Note** we propose to brief you further at the appropriate time on the following areas for improvement, to support you in developing the work programme for the Workplace Relations and Safety portfolio:

- reforming health and safety law and regulations
- supporting development of renewables including hydrogen (priorities for the Energy and Resources portfolios)
- improving work health and safety regulatory system data and measurement.

Noted



Hayden Fenwick
Manager, Health and Safety Policy
Labour, Science and Enterprise, MBIE

18 / 01 / 2024

Hon Brooke van Velden
Minister for Workplace Relations and Safety

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New Zealand's work health and safety performance is still lagging

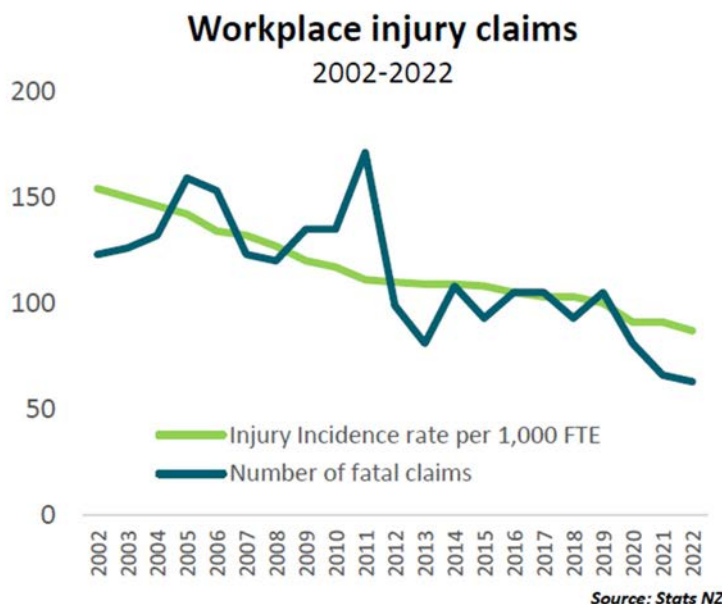
Key points:

- New Zealand's work-related harm is high in comparison with Australia and the United Kingdom (UK) but is gradually trending down.
- We need to improve data and measurement across the system and particularly on work-related ill health and catastrophic risk, to better identify areas for regulatory focus and improvement.

Our work health and safety performance is improving over time but is still poor compared to key comparators Australia and the UK

1. Poor work health and safety is costly for New Zealand's workers, communities, businesses, and economy, and affects the government through impacts on the health, welfare, rehabilitation and compensation systems, and as an employer. A recent report, by the Business Leaders' Health and Safety Forum (BLHSF), estimates New Zealand's work-related harm in 2022 at \$4.4 billion.¹ A tight labour market exacerbates the costs of work-related harm to a business of retaining good staff and of backfilling if a worker is injured or falls ill. Good work health and safety both keeps people in jobs and attracts workers if New Zealand is seen as a safe place to work.
2. The substantial change and investment over the last 13 years since the Pike River Coal Mine tragedy resulted in good initial progress. New Zealand's work health and safety performance then started to stall just prior to the COVID-19 pandemic. Following COVID-19 restrictions in 2020, which coincided with a large drop in work-related injury claims to ACC, work-related deaths and the rate of work-related injury claims have started to decrease again.
3. As shown in **Figure 1**, both work-related deaths and work-related injury claims are at their lowest level since the start of the data series in 2002.² In 2022, 87 per 1,000 full time equivalent (FTE) employees made injury claims, and there were 63 work-related deaths.

Figure 1: Work-related injury statistics show a slowly declining trend



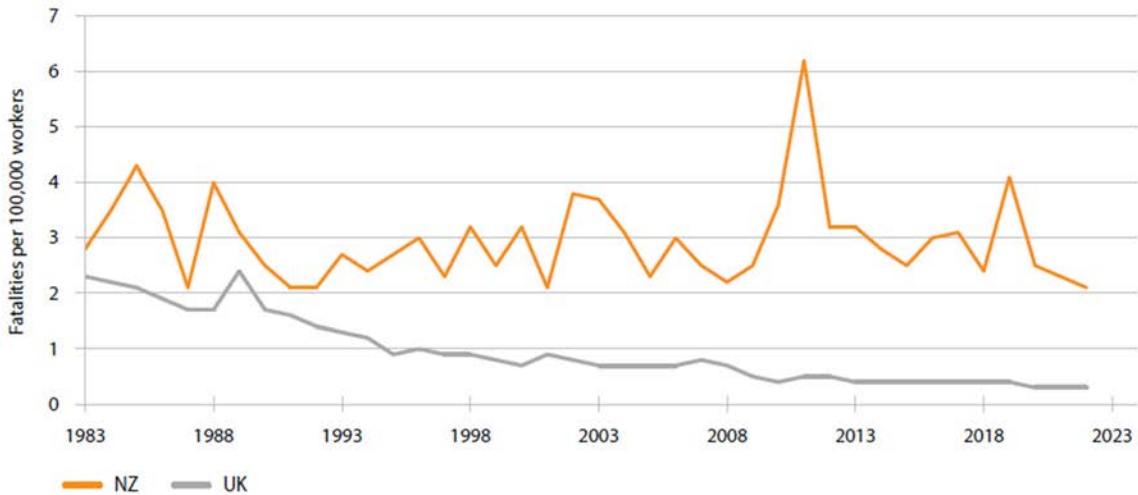
¹ Business Leaders' Health and Safety Forum, *State of a Thriving Nation: Health, Safety and Wellbeing in New Zealand*, August 2023; [State of a Thriving Nation » Business Leaders Health & Safety Forum](#)

² [Injury statistics – work-related claims: 2022 | Stats NZ](#) Note that 2022 data is provisional.

4. While declining, New Zealand's rate of work-related deaths continues to track at six times that of the UK and twice that of Australia, as shown in **Figure 2** below.³ New Zealand's fatality rate is on a par with the UK's rate in the 1980s. The BLHSF estimates that if New Zealand matched Australia's rates, the cost of our work-related harm would reduce by \$1 billion a year.

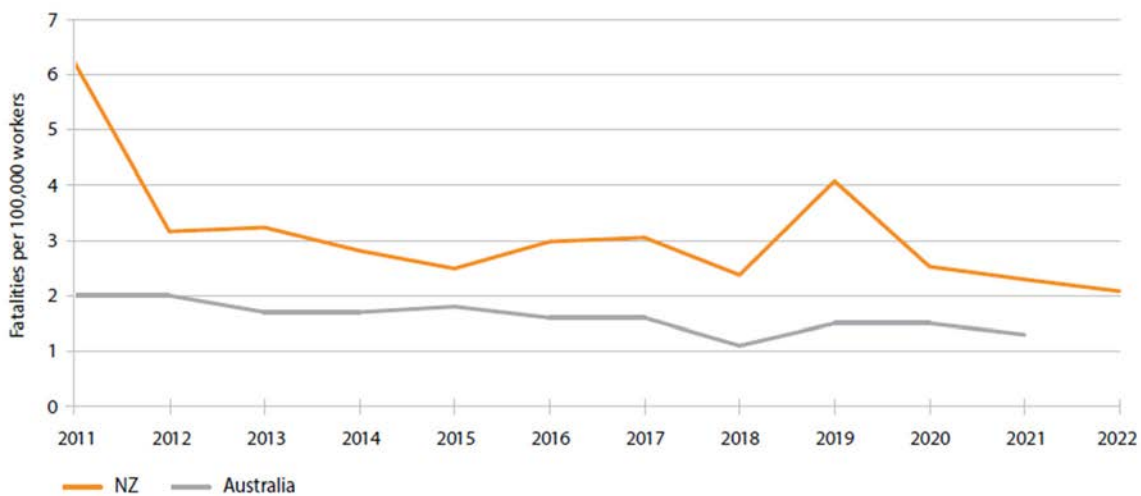
Figure 2: Work-related deaths continue to track higher in New Zealand than the UK and Australia⁴

Workplace fatality rate: NZ vs UK



Source: Statistics New Zealand, WorkSafe NZ, Health and Safety Executive (HSE) UK

Workplace fatality rate: NZ vs Australia



Source: WorkSafe NZ, WorkSafe Australia

5. Certain industries and workers are at higher risk, as shown by ACC injury statistics:⁵
- Manufacturing had the highest rate of injury claims by industry in 2022, with 152 claims per 1,000 FTEs. Agriculture, forestry and fishing now has the second highest rate, after a substantial drop in 2022 from 189 to 149 injuries per 1,000 FTEs.

³ While direct comparison of international work health and safety outcomes is challenging, the two jurisdictions we usually compare ourselves to are Australia (1.4 deaths per 100,000 FTE) and the UK (0.41 deaths per 100,000 FTEs).

⁴ Business Leaders' Health and Safety Forum, *State of a Thriving Nation: Health, Safety and Wellbeing in New Zealand*, August 2023; [State of a Thriving Nation » Business Leaders Health & Safety Forum](#)

⁵ [Injury statistics – work-related claims: 2022 | Stats NZ](#)

- Construction has had the highest total number of claims by industry since 2020, with 38,000 claims in 2022 (17 per cent of all claims).
- Trades workers have had the highest number of claims by occupation since 2007, with 39,600 claims in 2022 (18 per cent of all claims).
- Plant and machine operators and assemblers had the most claims involving entitlement payments, with 8,500 claims in 2022 (21 per cent of ACC entitlement claims).⁶

We need better data on work-related ill health and catastrophic risk to identify improvements

6. New Zealand's burden of work-related ill health and disease is less clear (due to challenges in causal links, the often-delayed onset of ill health, and likely underreporting) but is substantial. While there is no current trend data to determine progress, WorkSafe estimates a worker is 15 times more likely to die from a work-related disease than from injury, with:
 - 750-900 work-related ill health deaths a year
 - 5,000-6,000 hospitalisations each year due to work-related ill health
 - a social cost to New Zealand of \$2 billion per year.⁷
7. The three largest causes of work-related ill health are carcinogens and respiratory risks, musculoskeletal disorders, and mental ill health.
8. Catastrophic events such as the Pike River Coal Mine tragedy, the IcePak Coolstores fire at Tamahere and the Whakaari/White Island eruption have significant impacts but occur much less frequently. This leads to a lack of robust data and the importance of monitoring and controlling for risk before these types of events occur.
9. We consider there is substantial opportunity to improve work health and safety regulatory system performance by developing and sharing better data and insights to improve decision-making by businesses, industry and government, across all areas of work-related fatalities, injury, illness and catastrophic risk. We will provide you with further advice on this topic.

Striking a balance between flexibility and certainty for businesses

Key points:

- The performance-based duties of the *Health and Safety at Work Act 2015* (the HSW Act) are flexible to address the different circumstances and types of risks in different businesses.
- The HSW Act requires clear regulations and guidance proportionate to the risk to provide certainty to businesses and workers on their legal obligations.

10. To prevent harm in New Zealand's workplaces, our work health and safety regulatory system is designed around businesses and workers knowing how to best manage the work health and safety risk in their business. To do this effectively, businesses need to be supported by an efficient and effective regulator and a clear and proportionate regulatory system. These are both the role of government within the Workplace Relations and Safety portfolio.
11. The broad nature of the system gives rise to many stakeholders covering key industries, businesses, worker representatives and health and safety professional bodies. Engagement with stakeholders is crucial, particularly when developing regulatory proposals on highly technical areas of risk and identifying appropriate solutions and possible compliance costs.

⁶ Work-related injury claims involving entitlement payments (such as death benefits, loss of earning payments, lump sums, and rehabilitation payments) generally arise from more serious injuries.

⁷ [Work-related health estimates and burden of harm | WorkSafe](#)

12. MBIE's engagement with key stakeholders to date has indicated that:
- they want up-to-date, easy to follow regulations to provide clarity
 - some want better guidance and a stronger presence from WorkSafe and the other work health and safety regulators⁸
 - they have varying views about the extent and ways that non-government stakeholder groups could take a leading role in the system.

Improving WorkSafe's performance as the primary work health and safety regulator

13. An effective work health and safety regulatory system requires an efficient and effective primary regulator focused:
- on the right things – targeting and prioritising based on risk and harm
 - in the right way – using the right tools proportionately (engagement, enforcement, standard setting)
 - at the right time – a prevention focus, while also holding people to account for breaches of their obligations.
14. WorkSafe's performance is an area of particular focus. Its Board and Chair are aware of WorkSafe's challenges and are working to address them. MBIE's Entity Performance and Investment branch has provided you with further detail on WorkSafe's performance and your wider role and responsibilities for WorkSafe [Briefing 2324-0988 refers].

The regulatory system must strike a balance between flexibility and certainty for businesses

15. The BLHSF report notes that both the UK and Australia's regulatory contexts are widely considered to be more comprehensive in their expectations, and firmer in their assessment and enforcement approaches.
16. In other jurisdictions, workers and others can also sue for personal injury and insurers will price risk into premiums, in turn driving behaviour to manage health and safety risk. New Zealand's no-fault accident compensation scheme results in more emphasis on the incentives and clarity provided through the work health and safety regulatory system.
17. To help strengthen business performance, the work health and safety regulatory system and its institutions must strike an appropriate balance between the core regulatory objectives of **flexibility, worker protection, and certainty** for regulated parties.
18. The performance-based work health and safety regulatory system can give rise to tension between flexibility and certainty. The HSW Act places the primary duty of care on the business to do what is reasonably practicable in its circumstances to keep safe its workers and others affected by the work of the business. The broad nature of these duties means that they do not quickly date, they support innovation, and they are flexible to address the different circumstances and types of risks in different businesses. While this flexibility avoids one-size-fits-all rules, it can be in tension with the need for certainty because the HSW Act does not explain how the business should meet its duties.
19. The HSW Act has proved soundly based and able to respond flexibly to the unique challenges thrown up by COVID-19 for businesses and WorkSafe, without needing legislative changes. The recent Whakaari/White Island court proceedings also arose from a challenging and unique set of circumstances, and are ongoing with appeal by WorkSafe. We

⁸ The Civil Aviation Authority and Maritime New Zealand are the designated health and safety regulators for the aviation and maritime sectors respectively.

will provide further advice if required on any legislative implications once the appeal is completed.⁹

20. In a performance-based regulatory system, the necessary clarity on legal obligations must sit somewhere. This clarity can be provided in regulations made by Cabinet, supported by Safe Work Instruments or Approved Codes of Practice, which are developed by WorkSafe and approved by you. **Figure 3** below outlines the Health and Safety at Work legislative framework.¹⁰ Government has choices about what detail sits where in the framework. There is opportunity to improve the quality and focus of this detail at all levels across the framework.

Figure 3: Health and Safety at Work legislative framework



21. If the necessary regulatory detail in high risk areas is lacking, outdated or overly complex, then this space is filled by others. This can range from further guidance, enforcement action or exemptions by the regulator, by case law, or by health and safety professionals or duty holders trying their best in the absence of good information on what is required to meet obligations. This can lead to both over- and under-compliance, unnecessary cost, and work-related harm.
22. To provide the necessary certainty to businesses, regulations need to be fit-for-purpose and proportionate to the scale and nature of the risk and cost to business, without being overly prescriptive. The HSW Act and regulations layer the requirements to control health and safety risks in a way that is proportionate to that risk. Where risk is lower, only the performance-based general duty in the HSW Act may apply. Where risk is high, regulations may apply more controls, directing action by businesses to focus on critical risks.

⁹ After the Whakaari/White Island court proceedings, there were renewed calls to create an offence of corporate manslaughter. These calls initially arose after the Pike River Coal Mine tragedy and the collapse of the CTV building in the Christchurch earthquake. As this type of offence would be best placed in the *Crimes Act 1961*, the Ministry of Justice was previously leading policy work on this matter, with policy proposals well advanced when overtaken by the need for the COVID-19 pandemic response.

¹⁰ The Health and Safety at Work legislative framework is based on the performance-based Robens approach to work health and safety developed in the UK. The HSW Act has been adapted from the Australian Model Work Health and Safety Act.

23. MBIE's focus for ensuring clear and proportionate regulation is in areas of high risk. Areas of lower risk where the legislation intentionally does not provide further regulatory detail may attract unnecessary focus and lead to over-compliance. WorkSafe, sector and industry groups have a significant role in providing guidance and advice on the level of effort that is proportionate to the risks, to support businesses in focusing on their critical risks. Stakeholders regularly indicate they want increased effort and focus on guidance.

For example: WorkSafe myth-busting guidance addresses the myth that it's too risky to let kids climb trees at school, among other common health and safety myths
[Mythbusting | WorkSafe](https://www.worksafe.govt.nz/managing-health-and-safety/getting-started/mythbusting-and-faqs/mythbusting/) <https://www.worksafe.govt.nz/managing-health-and-safety/getting-started/mythbusting-and-faqs/mythbusting/>

24. While the HSW Act itself has proven responsive and flexible, progress has been slow towards ensuring clear, modern, fit-for-purpose regulations that provide more certainty about businesses' work health and safety obligations, particularly in the face of quickly emerging technology and risks, and changing workplace practices and demographics.

Opportunities for improving New Zealand's work health and safety

25. We would welcome the opportunity to discuss your priorities for the Workplace Relations and Safety portfolio in reforming health and safety law and regulations.
26. The two key ways in which MBIE can make the largest difference are by ensuring clear and proportionate regulations to improve certainty for businesses, and by supporting WorkSafe as an effective regulator. You have received initial advice on WorkSafe's performance and MBIE will continue to brief you as appropriate on this matter.

Modernising work health and safety regulations to improve certainty for businesses

27. 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, and a set of older regulations was saved under the new Act. Progress on modernising these older regulations has been slow. Continued reliance on outdated, patchy and overly complex regulations (some dating from the 1970s and earlier) is creating unnecessary uncertainty and costs to businesses and the regulator. **Annex One** outlines the work health and safety regulatory framework and areas of outdated, incomplete and complex regulation.
28. You have choices on where we best focus our effort, based on criteria such as the work-related risk and harm, costs to duty holders and the regulator, lack of clarity, and where our work supports the delivery of wider Government priorities.
29. We consider the hazardous substances regulations a priority given their wide coverage of acute, chronic and catastrophic risks, their size and reach across industries and businesses, their complexity and high compliance cost particularly for small businesses, and costs for WorkSafe as the regulator.

For example: Businesses frequently request exemptions from prescriptive, inflexible separation distances in the *Health and Safety at Work (Hazardous Substances Regulations) 2016*. They may not be able to meet the prescribed distances for legitimate reasons and could operate safely under different distances with additional controls to mitigate risk. Providing exemptions requires WorkSafe to apply short-term patches to the regulatory framework and does not give long-term certainty for these businesses.

30. Reforming the hazardous substances regulations could be a substantial, complex, multi-year work programme, depending on the nature and scale of the issues identified. Significant stakeholder and regulator engagement and technical input would be required to ensure quality regulation.
31. The area of quickest regulatory gain, while also addressing the greatest acute harm, would be through modernising outdated plant (ie machinery and tools), structures and work at height regulations. These regulations are increasingly difficult for businesses to comply with and for WorkSafe to enforce, and cover areas accounting for nearly 80 per cent of New Zealand's work-related death. Draft modernised regulations are well progressed, informed by substantial stakeholder consultation and engagement over the last few years.

For example: The *Health and Safety in Employment Regulations 1995* require specific types of guarding on certain types of machinery, like circular saws. A modern regulatory approach would require guarding that is suitable to the risk and would also allow for modern presence-sensing systems that stop the machine where a person is detected.

32. A further focus area is ensuring the regulatory regime is flexible and responsive to new technology such as developments in renewable energy and new uses of hydrogen. This work would support cross-portfolio priorities in the Energy and Resources portfolios, as outlined in the National Party *Electrify New Zealand* policy and the New Zealand First Coalition Agreement. We will separately brief you and the Minister for Energy on potential next steps for supporting the safe use of hydrogen.
33. There are further areas for regulatory reform for you to consider, as outlined in **Annex One**. We will brief you further and seek your direction on next steps.

Strengthening work health and safety system performance and measurement

MBIE and WorkSafe have roles in improving whole-of-system measurement and monitoring

34. To underpin our policy advice, and to inform WorkSafe's prioritisation strategies, we need to keep improving our knowledge of how the system is operating, what results it is delivering and why, and what the issues and opportunities are. This is part of our role as stewards of the work health and safety regulatory system. Developing and sharing better data and insights to improve decision-making by all participants is also a priority area of the *Health and Safety at Work Strategy 2018–2028* (the Strategy), which is discussed below.
35. MBIE has had limited resource to progress this work and we expect that will continue to be the case. We propose to provide you with a follow-up briefing on how system measurement and information can contribute to improving health and safety at work outcomes. This briefing will include advice on the use of system targets to date and possible future applications.

The Health and Safety at Work Strategy has been difficult to implement

36. The Strategy's vision is that work is healthy and safe for everyone in New Zealand. The Strategy's goals are that everyone plays their part to manage health and safety risks effectively and proportionately by focusing on what will make the biggest impact to reduce harm, and building everyone's capability to do this well.
37. Despite stakeholders' support for the Strategy, our efforts to bring sector representatives and other stakeholders together haven't resulted in agreements on priorities, nor on who is best placed to take which actions. These efforts may have inadvertently blurred roles and blunted incentives on stakeholders. They may have fuelled expectations of government funding, and that officials' time would be diverted from ministerial priorities to coordinate and service cross-sector meetings.

Improved system outcomes and progressing the Strategy are best achieved by all system participants focusing on their specific roles

38. MBIE can make the biggest impact to reduce harm by focusing on what only we can do: providing policy advice on the regulatory framework. Prioritising our limited resources to this core role means we don't spread ourselves too thinly over the various areas of the Strategy or move into aspects where we have little leverage and risk blurring roles with other participants.
39. This in turn helps other participants to play their parts: WorkSafe and the other regulators focus on being effective regulators; and sector and expert groups continue to develop and share expertise to improve the performance of duty holders. They also provide feedback to the regulators and MBIE on issues and opportunities in the system. These groups include the BLHSF, the Health and Safety Association of New Zealand (HASANZ - the umbrella organisation representing work health and safety professions in New Zealand), the Forestry Industry Safety Council, Safer Farms, and Construction Health and Safety New Zealand.
40. System participants have variously been raising funding and resourcing issues, including the BLHSF (particularly on the implementation of the Strategy), HASANZ, and the Mines Rescue Trust (a non-profit organisation that provides specialist resources and expertise for emergency services primarily to the mining and tunnelling industries). If desired, we can provide you with more information and advice on these matters as appropriate.

Next steps

41. To support you in developing your work programme, we propose to brief you further on the following areas of opportunity:
 - Priority areas for reforming health and safety regulations, including:
 - reforming hazardous substances regulations – with wide coverage of acute, chronic and catastrophic risks, and high complexity and costs for businesses and WorkSafe
 - modernising outdated regulations for plant (ie machinery and tools), structures and work at height – with the potential for the quickest gain and addressing the area of greatest acute harm and death.
 - Supporting development of renewables including new uses of hydrogen (supporting cross-portfolio priorities for the Energy and Resources portfolios).
 - Improving New Zealand's work health and safety performance through better measurement, data and insights to improve decision-making across the regulatory system.
42. These areas of regulatory focus, underpinned by improved system measurement and data, will further support the Government's wider priorities for improving the quality of regulation.
43. Given the range of potential policy areas, the portfolio work programme will need to be heavily prioritised, considering factors such as your priorities and preferences, Government priorities and commitments, the presenting risk and harm, costs to business and government, and stakeholder views and expectations.
44. We look forward to discussing with you your portfolio priorities for work health and safety, at the appropriate time.

Annexes

Annex One: Health and Safety at Work Regulatory Framework

Annex One: Health and Safety at Work Regulatory Framework

Key:

- Highlighted in **blue** – made recently under the *Health and Safety at Work Act 2015*.
- Highlighted in **green** or **orange** – outdated legislation made under the *Health and Safety in Employment Act 1992* or **older legislation**.
- Potential areas of immediate regulatory focus **circled in red**.

