



Compliance issues?

What compliance issues?

NZIER report to the Employers and Manufacturers Association
June 2019

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NZIER was established in 1958.

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The assistance of Sarah Spring is gratefully acknowledged.

We would like to thank the members of EMA Northern who were prepared to give up their time during a very busy time of year to contribute to the qualitative review.



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Key points: A compliance scorecard

Businesses understand and support effective regulation

Businesses understand that taxation and regulation are important – it ensures that:

- revenue is raised efficiently
- workplaces are safe
- workers are safeguarded and treated fairly
- the environmental impacts of business activity are mitigated
- citizens and customers are protected by assurances that goods and services are safe and fit for purpose.

Working well

Workplace safety: Employers value the impact of workplace safety and think WorkSafe, by and large, does a good job on insufficient resourcing and that there are positive benefits for staff knowing that management takes safety seriously.

Tax: Nobody raised tax compliance as an issue with us. While tax compliance is probably a business's biggest area of compliance cost, Inland Revenue (IRD) is felt to have its act together, processes are predictable and businesses factor it in.

Working poorly?

Regulation of employment disputes: Employment disputes are believed by firms to be fanned by an increasingly litigious legal advocacy business, supported by an Employment Relations Authority (ERA) that employers believe – with some evidence to back this view – is stacked in favour of employees.

The data seems to show that awarded compensation is increasing, yet employers tell us they will go to almost any lengths to avoid going into the formal system. Even if the set of cases for which data exists represent the subset of “difficult” cases, the performance of this part of the regulatory system warrants review.

Missing in action...

Official government data. We were unable to get consistent time series information post-2012 about the overall impact of compliance costs on businesses in New Zealand. There is virtually no robust data available on businesses with less than six employees¹. We acknowledge that there have been a range of initiatives proposed (and some implemented) to simplify transacting with government, but in our view, it would be fair to say that, since NZIER last raised concern about the lack of government oversight of the overall cost of compliance it imposes on firms and individuals in 2016,² nothing has really changed.

¹ excluding approximately 91 percent of all New Zealand business and approximately 31 percent of New Zealand's employed workforce

² Assessing the Stock of Regulation: A Tool for Regulatory Stewards, NZIER working paper 2016-01, May 2016

...and a warning

The cost of compliance isn't just in cash. It is in lost productivity, work-arounds, management time and 'headroom' (deadweight costs). It's pretty clear that the amount of time dealing with red tape has been steadily increasing, but employers haven't been paying enough attention. While our sample of firms was small, everyone we talked to has noticed that, in some cases, up to half their time is dealing with compliance or they have had to take on specialist staff to handle compliance issues.

This could be an instance where the frog is quietly allowing itself to be boiled. The consequences of lost leadership time will be measured in lost productivity, lost opportunity and management burn-out.

Executive summary

We have chosen to define business compliance costs for this review as the administrative and paperwork costs created from government taxation and regulation. (We haven't sought to quantify the economic costs of the distortions created from a regulated business environment.) This includes compliance associated with taxation as well as with wider regulatory interventions by government (workplace safety, consumer safety etc.).

We commenced this study assuming that business compliance data collected by Stats NZ, MBIE and IRD would be reasonably readily accessible, reasonably readily comparable and reasonably up to date. These assumptions proved to be mistaken.

We have based this review therefore on a mix of public data where it was available and added a small sample of qualitative interviews with members of EMA Northern during December 2018 and January 2019. The sample was not intended to be statistically significant but to give a sense of how things were "at the coalface" and to illustrate where gaps in the data did not allow us to evaluate.

Compliance is increasingly a big business

We interviewed a sample of business leaders and employers to gain their views on compliance matters and the impact it was having on their business. The results were both refreshing and something of a surprise to us. These key points were made:

- Businesses 'get' and support responsible regulation.
- Businesses are observing that more and more of their time is being spent overseeing regulatory requirements.
- Responsible regulation is good for business – to a point.
- How well businesses respond to regulatory requirements is not of great commercial benefit in the market, but it is important for keeping and retaining staff.

Many firms have hired specialist compliance staff engaged with specialist firms providing services. Increasing senior leadership time and effort are focused on understanding and managing compliance issues.

A whole industry of specialist occupations and/or businesses has been created to help firms manage increased regulation. The creation of new regulation-specific roles has been the market response to the increasing complexity of compliance with government regulation.

The most important observation we can make – and what did surprise us – is that most of the firms we talked to are so busy that they haven't had a chance to reflect on how much more of their leadership time is being allocated to managing compliance.

We see this as the elephant in the room for business and for government. At a time when we are urging businesses to improve productivity, we are also requiring an increased focus on compliance with government requirements that individually are regarded as reasonable but in aggregate represent a significant and increasing workload, which is reducing management 'headroom'.

Nobody is keeping the score

NZIER last addressed the issue of the cost of regulation in a public working paper published in 2016.³

While the regulatory stewardship responsibilities of chief executives have been clarified, the development of the tools to meet those responsibilities has lagged behind. Almost no guidance is provided on how to review the existing stock.

We were disappointed to find that, in December 2018, it was still not possible to use official New Zealand Government data sources to identify how much compliance is costing small to medium businesses in 2018 and indeed that the 2012 data used to perform our assessment in 2016 is still the most up-to-date available.

We note that successive governments in New Zealand have sought to review, assess, address and justify the cost of business regulation. There have been a range of initiatives, including the requirement for Regulatory Impact Statements (RISs) and the use of MBIE and Treasury resources to require that any regulatory impost is required to undergo a rigorous assessment to ensure that the benefits outweigh the costs. We also acknowledge the initiatives under Better Public Services and more recently the SME taskforce.

It is not clear that any part of the government system is currently compiling information on – let alone addressing – compliance issues in a systemic or systematic manner. However well meaning, front-end initiatives are unlikely to be effective if the cumulative impacts of compliance costs aren't recorded or assessed.

Workplace safety regulation is widely supported

Employers felt that WorkSafe is doing a good job but is under-resourced for the task. Sub-contractor businesses are however needing a lot of support to come up to speed and retain compliance. This cost is being borne by head contractors.

Respondents also felt that workplace safety plans have had a positive impact on their businesses – it sends a tangible message that management cares about safety and takes it seriously.

Employment relations turn up a number of key findings

Most workplaces are harmonious, and relationships with staff and management are good.

- There is a remarkably strong preference to hire New Zealanders for permanent staff and for limiting the use of contractors.
- There are critical shortages of New Zealanders with the skills to fill roles, particularly in construction, and this is a handbrake on a firm's ability to grow or willingness to expand.
- The employment relations area has become increasingly litigious, lawyers have moved into the advocacy market and the ERA is seen as stacked against employers. Most employers will do almost anything to avoid going to mediation or the Tribunal.

³ *Assessing the Stock of Regulation: A Tool for Regulatory Stewards*, NZIER working paper 2016-01, May 2016

In December 2018, when the survey was undertaken, none of the businesses we talked to had got their heads around the government's proposed reforms to the Employment Relations Act, many of which come into effect in April 2019.

Consumer protection regulation turned up several important issues

- Businesses understand the importance of safety and the need to demonstrate that goods are fit for purpose.
- New Zealand-manufactured building materials and componentry are considerably more expensive than sourcing offshore.
- There is increasing concern that building componentry being imported, particularly from China, is not compliant with Australian and New Zealand codes. Issues brought up with us were reinforcing and construction steels, cabling and wiring, and building facades (aluminium cladding).
- There is a real concern that, as New Zealand-sourced product is replaced with imported, there will be large liability issues for New Zealand head contractors who have relied upon certification that is not trustworthy.

The amount of time spent by management and leadership on compliance is increasing but is not always apparent in the moment

Complying with regulatory and taxation change is costly. The points of contention for most businesses we interviewed was not how much regulation they were responding to but how they were addressing *changes* in regulation and tax.

While we normally think of business productivity in terms of output per unit of labour, or worker productivity, our review suggests that management time not focused on business strategy, leadership or delivery might be one of the biggest productivity losses that a business faces, and this cost is almost entirely invisible to companies, or “below the line”.

Because regulatory change is usually incremental, it is sometimes hard to step back and see how much management effort has, over time, been diverted to complying with regulation. Business leaders seem to exhibit a high level of trust in regulators but don't seem to appreciate the quantum of costs that government imposes.

We observed that business leaders tend to identify compliance cost at the point when regulations change, but it is very rare to pause and reflect that:

- increasingly more management effort has been diverted from managing the business to managing the compliance
- new employment roles have had to be created within organisations to address the regulatory change
- real expense is incurred, often internalised but sometimes explicitly, to a specialist compliance function or business.

These ‘shifts in allocative efficiency’ – second-best solutions for how a business would otherwise operate – have become the new normal and become accepted as just another aspect of running a business. They clearly represent a real cost, and are likely to result in lower productivity for the business.

Like the proverbial frog in boiling water,⁴ the collective impact of increasing regulation and the penalties for non-compliance is increasing distortions to businesses around how they operate, the non-productive costs they face, the opportunity for more output to be lost and the unrecompensed transfers they provide to government through doing its paperwork.

Challenge for government: measure the burden

The challenge for the government is to understand its compliance burden. Does the government really understand how much regulation costs and how costs are changing with new regulation and time?

The main difficulty NZIER faced in this project was measuring business total compliance costs. IRD undertakes research into tax compliance burden, but similar research does not exist in other compliance cost areas chosen in this study – labour market regulation, health and safety, and consumer protection – despite these being areas of active regulatory change.

Compliance measurement can be subtle. The cost of increased labour market regulation is not how many more hearings occurred in the ERA – an easily measured administrative record – but rather:

- the increased number of threats of action resulting from the legislation change
- the increased volume of documentation generated for each incident
- the increased risk of getting compliance wrong and being penalised by government or private sector agents.

In New Zealand, the government has a strong set of tools in place for measuring compliance cost. Every regulation change involves a Regulatory Impact Assessment (RIA) undertaken by the responsible government department.⁵ These are a natural data source or questionnaire that could serve as a basis for systematically measuring compliance.

The Ministry of Economic Development (MED) – now MBIE – had previously taken the lead on compliance cost reduction. In 2001, MED issued its *Business Compliance Cost Statement: Guidelines for Departments* to support Cabinet’s directive on compliance cost reduction. The guidelines offered sound practical advice to departments.

Treasury has taken over responsibility for setting the RIA guidelines, which incorporate some aspects of the MED guidelines.⁶ The former MED’s emphasis on the non-quantifiable effects of needing to comply with government requirements and uncertainty about obligations, often referred to as ‘psychic costs’,⁷ are no longer included in Treasury’s guidelines. Neither the MED nor Treasury guidelines include measuring the economic costs of regulation. However, our conversations with business suggest the economic costs are a very real aspect of a regulation’s total compliance cost.

⁴ https://en.wikipedia.org/wiki/Boiling_frog

⁵ <https://treasury.govt.nz/information-and-services/regulation/impact-analysis-requirements-regulatory-proposals>

⁶ <https://treasury.govt.nz/sites/default/files/2018-03/ia-bestprac-guidance-note.pdf> on page 13.

⁷ Non-quantifiable effects such as stress and anxiety are often referred to as psychic costs.

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1. Findings and results

Information and regular reporting on compliance costs is poor

Our research has been unable to identify an authoritative quantitative data source that can show how compliance costs are changing over time. The best statistical measure we found came from 2 years of Stats NZ's Business Operations Survey (BOS), undertaken in 2012 and 2016. Businesses with six or more employees (which excludes 91 percent of New Zealand enterprises) self-reported their perceptions of business compliance costs.

We aren't a big company, we have to rely on third party consultants to make sure our systems comply. (Manufacturing company)

Legislation equals more responsibility equals more paperwork. These are real costs. (Construction company)

The initiative the MED started in 2001 to improve government's measurement of compliance cost through RIAs has been watered down by Treasury guidelines, which limit what are to be defined as compliance costs. Compliance costs associated with regulatory change could be collected through RIAs.

The 2008–2017 New Zealand Government introduced specific targets as part of its Better Public Services (BPS) programme. BPS result 9 stated:

RESULT 9: BETTER FOR BUSINESS - DELIVERING BETTER PUBLIC SERVICES TO BUSINESS CUSTOMERS

How will we know we are achieving our targets?

To drive change the government set the public sector two challenging targets:

1. Business costs (effort) from dealing with government will reduce by 25% by 2017, through a year-on-year reduction in effort required to work with agencies.
2. Government services to business will have similar key performance ratings as leading private sector firms by July 2017.

To track progress towards these targets the Better for Business partnership uses a rolling monthly monitor surveying 1200 business owners every six months.

Source: State Services Commission Better Public Services report 2017.

BPS 9 was largely focused on improving how government interacted with business, through the Business Number and technology. It didn't explicitly address compliance costs (except by IRD). Nor did it seek to address the stock of regulation.

The BPS programme was terminated in January 2018.

Our assessment of compliance costs in 2018 also fails to deliver a strong statistical evidence-based finding. However, we have found some important learnings for regulators and legislators.

Change is the burden, not compliance levels

All businesses, regardless of size or industry, seem to struggle with the impact of regulatory *change*. Coming through strongly in our interviews with business and in the data (especially the BOS) was that new regulation or increases in regulatory complexity are a significant source of costs for business. As one of the firms put it.

The EPA just changed the rules [for storing hazardous materials] – we don't know why, we just have to comply, this required a lot of effort from the team. (Manufacturing company)

We know government is going to add more regulation this coming year. It's hard to mitigate risks when you can't get clarity around what's required. (Manufacturing company)

Labour market regulation seems non-business enhancing and the largest source of compliance cost

Labour market regulation, from our conversations and in the previous research, seems to be the source of compliance cost that cause business the most problems. Whether it be the blurring of the employee/contractor boundary for business, the introduction or change in labour-related documentation or reporting requirements or the increasingly litigious environment, few businesses are saying labour market regulation is enhancing their business.

We stay away from employment confrontations, we work very hard to avoid going to mediation – but it's getting very litigious, and there are lots of legal advocates out there trying to create an industry. (Construction company)

We do it in-house and we're good at it, but its taking nearly half my time now. (Construction company)

Employers perceive that ERA outcomes are weighted in favour of employees and actively seek to avoid mediation. MBIE-reported data seems to support the view that costs are increasing – although it does not record those cases that do not get to the formal system.

Table 1 ERA costs decisions outcomes

Year ending	Hearings where employee awarded costs	Hearings where employer awarded costs	Employee awarded costs (%)	Employer awarded costs (%)
2012	104	92	53%	47%
2013	146	108	57%	43%
2014	102	93	52%	48%
2015	81	56	59%	41%
2016	113	64	64%	36%
2017	105	59	64%	36%
2018	57	33	63%	37%

Source: Cost award tables – MBIE: <https://www.employment.govt.nz/about/employment-law/compensation-and-cost-award-tables>

Taxation system compliance costs seem OK

The taxation system, on balance, does not seem to be a continual source of compliance cost or business grievance. Our interviews with business did not draw a conclusion of tax-based compliance costs, but previous research and the view of the Small Business Development Group seems to suggest IRD has made significant inroads into reducing tax-related compliance costs.

Tax is just something we have to do, we have good staff and employ accountants, it seems to work OK. (Construction company)

The Small Business Development Group (SBDG) – the government advisory group on small business – was troubled by tax-related penalties and sanctions (2016), but that view does not seem to be echoed in other research.

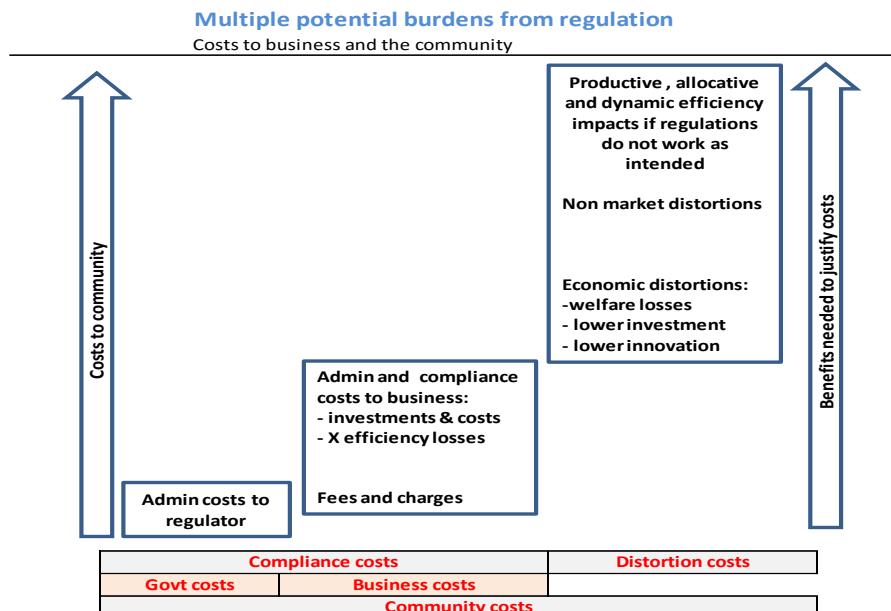
1.1. Compliance costs matter and represent a considerable burden to the economy

While regulations impose costs on businesses and individual taxpayers, these are generally hidden. Surprisingly little is known about the full cost of regulation, but the empirical evidence that is available suggests that the costs imposed by regulation are significant. In 2016, NZIER estimated the administrative cost of regulation in New Zealand averages around \$5 billion (2.9 percent of GDP).⁸ These estimates were in line with comparable estimates in other jurisdictions.

The \$5 billion only included the value of the effort of businesses and citizens to comply with regulation. These compliance costs did not include the distortionary cost of regulation resulting in undesirable and unanticipated changes of behaviour shown in Figure 1.

⁸ Assessing the Stock of Regulation: A Tool for Regulatory Stewards, NZIER working paper 2016-01, May 2016

Figure 1 Types of regulatory costs



Source: NZIER adapted from Victorian Productivity Commission

The relative sizes of the boxes in Figure 1 are drawn from the international tax literature as no authoritative estimates are available for the total distortionary cost of regulation. Surprisingly little is known about the distortionary costs of regulations, how they relate to administrative and compliance costs and how these in turn compare with the costs of taxation.⁹

The data survey we undertook in 2018 found little evidence that government agencies have acted to improve the collection of information on the impact of compliance. The principles of good government administration require that regulatory practice be simple, transparent, predictable and accountable. At this moment in time, it does not appear as though regulators are sufficiently aware of the cumulative impact of regulation on businesses, individuals and the wider community or of their responsibilities to understand and minimise the (unnecessary) costs they impose.

1.2. Not all regulation is bad

Health and safety regulation has enhanced business and is a source of competitive advantage

Business response to health and safety (H&S) has been a main highlight in conversations with business. All the businesses we spoke with felt H&S has improved business performance, a result supported by the BOS. H&S has been used as a competitive point of product/service differentiation, with customers choosing to pay higher prices to receive more H&S within their service/product.

⁹ See Gill and Frankel (2014) for a longer description of the formal roles and responsibilities of the different players including the Parliamentary Counsel Office and Select Committees.

For health and safety, we had to up our game, not just for us, but for our sub-contractors – we have had to invest to bring them up to speed.

At the end of the day, our people are thinking about how they will perform a task, they're being pro-active. Funnily enough, having our plan is showing our staff that we do care about them. (Construction company)

H&S is being demanded by customers, with some seeking evidence of a drug and alcohol management programme (DAMP) in place. Having a DAMP in place has improved workplace practices and efficiency.

Business has responded by creating H&S-specific employment roles or contracting dedicated third-party services, but it seems clear these roles have not negatively impacted on business performance.

Consumer protection

Consumer protection requirements, certification standards, product labelling and other regulation impacting on the quality and nature of the service/product delivered do not seem to be a source of regulatory compliance burden, and like H&S, consumer protection has been used to enhance competition through service differentiation.

1.3. Regulation-induced distortions

The cumulative impact of regulation is increasing, and NZIER is finding indications that scarce management resources are being directed towards addressing compliance. Increasing amounts of management effort is being used to consider how the business responds to risk created through the regulatory environment. In labour market regulation, businesses are maintaining an internal capability against the *risk* of a labour market issue.

1.4. Best practice for regulators

The following is drawn from theory, our findings, discussion with business and previous research and seems important to re-emphasise

1.4.1. Signal long

Business processes and change have a relatively long gestation period. Implementing new regulation or changing the complexity of existing regulation will cause large compliance costs, create stress and psychic costs and lead to large amounts of business uncertainty if implemented rapidly.

Businesses find out information through multiple information channels. Regulatory change will cause uncertainty. It's not reasonable to expect that all businesses will get the right information they need to comply in a quick and timely fashion.

Regulatory change needs to be signalled over a long timeframe to business.

1.4.2. Consult and publicise extensively

Change is inherently uncertain. Ill-defined policy directions, signalled with too much generality and with a lack of specificity, can potentially cause more needless compliance costs to business.

It might be a gold standard, but regulatory change signalled long and consulted and published extensively can reduce the impact of change on business.

1.4.3. Regulatory Impact Statements matter

RISs and RIAs were designed as a tool for government departments to gauge the degree of compliance cost change being imposed on business. However, in recent years, they have been used to describe the predominantly administrative costs of regulation. Cost benefit analysis for every regulatory change ought to be a standard requirement for every piece of regulation.

NZIER recommended the MED guidelines be reconsidered by Treasury in its guidelines to departments, since we think the MED material contains good, relevant advice.

1.4.4. Measure compliance and change over time

We were troubled that time-series information on business compliance costs does not exist in a readily identifiable form. We consider that this represents a major failing for New Zealand's government systems. It is very hard to conduct a reasoned debate on the impact of regulation if information is not collected, is not collected in a way that permits comparison or has gaps.

2. Methodology

We originally intended to undertake a data-driven exercise using Stats NZ and MBIE data plus that from IRD. We quickly realised that the existing data had not been updated recently nor was it possible to readily compare compliance information at the firm or sector level. We have quoted data where it was available, but there are methodological limitations.

We therefore sought to use what information we could find and then ‘fill in the gaps’ by illustrating the impact on businesses through a very small sample of conversations with firms. We do not purport that this represents a definitive or statistically significant group. We interviewed six firms from across the construction, transportation and retail/manufacturing members of EMA Northern. We very much appreciate members making their time available to speak with us during December 2018. The information from these interviews represents a small, qualitative sample. The questions we asked are appended in Appendix 1.

An issue that arose as we compared the data that exists with the feedback from interviews was that it is incredibly difficult to reach findings or draw conclusions.

For example, there is up-to-date information on ERA decisions and outcomes discussed later in this report. It seems to indicate that the number of hearings has reduced but that the awards of compensation and of costs has increased markedly in the last 3 years. It also suggests that the awards have started to favour employees.

Interviews with firms tell us that they believe that the Employment Court (EC) and the ERA exhibit bias towards employees and that the process has become increasingly litigious. Figure 2 and Figure 3 in section 4 might substantiate that view.

However, firms also told us that they will do almost anything to avoid going before the ERA or EC.

On this basis, we cannot confidently assess:

- the size of the total set of employment disputes that might exist, of which ERA or EC cases represent a subset
- whether the ERA and EC are increasing penalties for broadly similar breaches from previous years
- whether only the worst employers or most litigious employees are appearing before the ERA and/or the EC.

NZIER considers this sort of uncertainty contributes to the friction in the regulatory system. If fear of a regulatory process leads a firm to expend considerable energy and resources to reach a settlement in an employment dispute, or a commercial dispute, or a disagreement with a regulatory authority, we are in the worst of possible regulatory worlds.

3. Interviews with business

In the absence of quantitative measures of compliance costs, NZIER undertook a qualitative survey of firms in the manufacturing and construction industries. Our questions are reported in Appendix 1 of this paper.

3.1. Key quotes from business

*Legislation equals more responsibility equals more paperwork.
These are real costs. (Construction company)*

We are a bunch of people trying to do our jobs. Any piece of legislation creates administration that a number of people need to action. (Construction company)

The EPA just changed the rules [for storing hazardous materials] – we don't know why, we just have to comply, this required a lot of effort from the team.

We know government is going to add more regulation this coming year, I can't tell you why. It's hard to mitigate risks when you can't get clarity around what's required. (Manufacturing company)

We aren't a big company, we have to rely on third party consultants to make sure our systems comply. (Manufacturing company)

Our industry is important, we are good for the economy, we should be supported, not constrained. (Manufacturing company)

3.2. Feedback from firms

3.2.1. Labour market compliance

An incentivised legal profession has increased labour regulation compliance costs

Employment disputes are taking up an increasing amount of senior management time.

Disputes are felt to be increasingly driven by litigious lawyers who are forcing human resources departments to work at the level of documentation expected in a criminal proceeding.

The behaviour of 'lawyered-up' aggrieved employees is the issue. Employers are having to fight to defend themselves. Employers are required to investigate and document every single employment issue, regardless of the merits or issue's significance, which is where the compliance costs are being created.

Mediation is about money to make disputes go away, not merits

A failure to investigate properly will invalidate any negative employment decision. Firms feel that, if they cannot demonstrate full documentation of process, ERA would automatically conclude the employer had reached a decision without reference to “all the facts”.

What were “all the facts” did not need to be revealed to the ERA for the ERA to conclude the employer was unaware of them. A lack of an investigation was believed to be *prima facie* evidence that “all the facts” had not been obtained before the employer reached a negative employment decision.

Mediation is not about examining the merits of an employment dispute, it's about agreeing how much money the employer will pay to make the dispute go away. (Construction company)

Mediation is being actively avoided by some companies in preference towards settlement or taking a dispute directly to the EC.

Responding to the tight labour market

Firms we talked to wanted to hire New Zealanders. The manufacturers felt that they were able to find good staff fairly readily. The construction sector is feeling the pinch – there is a lot of competition for skilled and experienced workers.

We asked whether firms were looking at contractors to fill the gaps.

Interestingly, the response was largely negative. Contractors were actively avoided, except in specialist roles. It was felt that the risk of them being deemed employees negated any benefits from a more casualised approach. This was felt to be reinforced by strict liability for H&S for head contractors.

Some firms are offering formal apprenticeship schemes as a method for developing the skilled construction-specific labour it requires. However, with a 4-year time lag before the skills become available, apprenticeship schemes were not seen as an immediate solution to any long-term labour problem.

While the firms receive plenty of applicants for apprenticeships they offer, until they become fully qualified, apprentices do not cover their cost of training to the business. Firms felt the time cost of supervision and training by the qualified trade worker is barely offset by the combination of the apprentice’s output and lower wage cost.

Despite a tight labour market and difficulty in attracting younger untrained staff, construction firms are reluctant to increase wages as a method for attracting and retaining younger workers. Their perception was that increased wages at the entry level needed to attract staff might ripple wage increases all through its workforce, exacerbating wage inflation and cost pressures in an output market where building cost blowouts threatened the survival of the business.

3.2.2. Taxation compliance

There was little-to-no noise around taxation compliance. Companies understood the processes, and all had in-house and specialist expert accounting resource available to them. IRD was felt to perform well and signal change well.

None of the owners or senior managers we talked to had the results of the Tax Working Group on their radar in December 2018.

We observed that people were really busy and were focusing on running the business, not on looking over the horizon.

3.2.3. Health and safety compliance

When asked to sit back and reflect, the general consensus was that H&S was taking up an increasing portion of management, leadership and board time.

However, there seems to be a broad consensus that well-managed H&S, while imposing costs on the business, also created value for the business. Investment in H&S has reduced both business risks and ACC levies. H&S is taken very seriously by management and has reduced the number of workplace accidents and incidences.

I have no idea whether the workplace is more productive through H&S compliance, but management prefers a safe work environment, and H&S has definitely improved the behaviour of staff. (Construction company)

There was a mix of firms that internalised H&S functions or outsourced. Larger head contractors felt that good internal H&S capability is a core function of the business and good value for the business. Others were outsourcing from external suppliers. It was felt that sub-contractors and smaller suppliers were struggling to understand their obligations and that head contractors were having to help.

For Health and Safety, we had to up our game, not just for us, but for our sub-contractors – we have had to invest to bring them up to speed.

At the end of the day, our people are thinking about how they will perform a task, they're being pro-active. Funnily enough, having our plan is showing our staff that we do care about them. (Construction company)

Health and safety as competitive service differentiation

We looked at whether H&S provided a basis for competitive positioning with customers. One of the companies we talked to remarked that their customers have become more aware of H&S and seek more H&S in work they purchase. When offered a choice between two service options differing in H&S content and price, customers had chosen the more expensive higher H&S option, illustrating they attach a premium to and value greater H&S.

Customers were also starting to seek evidence that companies had a drug and alcohol management plan (DAMP) that was being routinely enforced.

On balance, firms felt that WorkSafe New Zealand was performing a reasonable service and that operating a strong H&S policy was paying off in improved workplace performance. A good DAMP and implementing H&S practices had improved the quality, planning and production of their construction outputs.

Implementation by WorkSafe was a bit sloppy, clearly under-resourced, but they've come up to speed well. [WorkSafe] are clearly also affected by the shortage of skilled people out there. (Construction company)

The cost of complying with H&S seems to be creating benefits for the business, workforce, output quality and customer preferences alike and may in fact be an example of an effective *desirable* regulatory outcome.

3.2.4. Consumer protection compliance

Like H&S, consumer protection compliance had become a competitive point of service differentiation valued by both the customers and the business.

One company deliberately sought out and only used materials purchased from firms that were certified as accredited providers by an Australasian accreditation firm. In turn, they were able to pass on the same degree of material quality assurance to their customers as they received from the Australasian standards organisation.

From their own perspective, they were altering their current processes to become ISO 9000 accredited. Investing in quality over and above the regulated consumer protection minimums was expected by clients and was also being undertaken by competitors:

... everyone has sharpened up their processes.

One manufacturing company had a different perspective. They were concerned by changes to the rules for handling hazardous goods (intermediate products used to manufacture cosmetics).

The EPA just changed the rules [for storing hazardous materials] – we don't know why, we just have to comply, this required a lot of effort from the team.

We know government is going to add more regulation this coming year, I can't tell you why. It's hard to mitigate risks when you can't get clarity around what's required. (Manufacturing company)

As discussed above, the biggest issue that the construction companies mentioned was their concern about certification of construction materials. All recognised that the cost of New Zealand-sourced product was driving their customers to explore sourcing overseas, but the reliability of sourced product and its ability to consistently demonstrate compliance with New Zealand engineering and safety standards was of increasing concern.

4. Employment Relations Authority and Employment Court outcomes

Businesses have told NZIER that they believe outcomes from the ERA more often go in favour of the employee. One of the reasons business feel ransomed by lawyered-up aggrieved employees is they feel mediation or formal dispute processes will decide against them more frequently than in other legal processes. Employers are not feeling the ERA is treating them fairly.

The SBDG (2016)¹⁰ felt this was a strong issue affecting small businesses.

Table 2 and Table 4 were derived from statistical data published on MBIE's website.¹¹ Table 2 reflects the numbers of ERA hearings across different calendar years where the employer or the employee were awarded costs. Table 4 reflects the number of hearings where the employee was successful and awarded compensation.

Table 3 and Table 5 are derived from the source data used in Table 2 and Table 4 and represent estimated total and average costs and compensation awarded respectively in both the ERA and EC.

The MBIE data does not reveal how many hearings in total were actually won by the employer versus the employee. However, it does support the view of business that formal dispute process awards more frequently in the employee's favour, and secondly, awarded compensation is a rewarding and lucrative business for employees and their legal representatives.

4.1. ERA costs awards

Table 2 ERA costs decisions outcomes

Year ending	Hearings where employee awarded costs	Hearings where employer awarded costs	Employee awarded costs (%)	Employer awarded costs (%)
2012	104	92	53%	47%
2013	146	108	57%	43%
2014	102	93	52%	48%
2015	81	56	59%	41%
2016	113	64	64%	36%
2017	105	59	64%	36%
2018	57	33	63%	37%

Source: Cost award tables – MBIE: <https://www.employment.govt.nz/about/employment-law/compensation-and-cost-award-tables>

¹⁰ <https://www.mbie.govt.nz/assets/90fc52f9f/small-business-development-group-2016-report.pdf>

¹¹ www.employment.govt.nz

Not all ERA decisions have awarded costs in favour of the successful party. Normally, costs follow naturally from a decision in favour of the successful party. However, the number of hearings where compensation was awarded in Table 4 is greater than the number of hearings where costs were awarded in Table 3, showing not all the successful employees receiving compensation also received costs in their favour.

From Table 2, where costs have been awarded to employees, they have been awarded almost twice as often as employers are awarded costs. The data does not reveal whether employees win twice as many ERA hearings as employers, but where a party has won a hearing and the ERA has decided to award costs, employees are awarded costs almost twice as often than employers.

Table 3 Average costs awarded to employers and employees by the ERA

Year ending	Employee successful	Employer successful	Employee successful – average costs compared to sum of costs	Employer successful – average costs compared to sum of costs
2012	\$3,521	\$4,002	47%	53%
2013	\$3,448	\$4,066	46%	54%
2014	\$3,698	\$3,628	50%	50%
2015	\$3,042	\$4,468	41%	59%
2016	\$3,468	\$4,198	45%	55%
2017	\$3,904	\$4,592	46%	54%
2018	\$3,824	\$4,901	44%	56%

Source: Cost award tables – MBIE: <https://www.employment.govt.nz/about/employment-law/compensation-and-cost-award-tables> – average costs derived by NZIER

The relative percentage of hearings where costs have been awarded to employees has been increasing over time (Table 2). The ERA is becoming increasingly more inclined to award costs against an employer in favour of an employee.

When costs have been awarded to the employer, employers have received higher average cost awards than employees received (Table 3).

4.2. ERA and EC compensation awards

Growth in the average compensation awarded by the ERA has far exceeded how the cost of living has changed, labour prices have changed or business output prices have changed.

From Table 4, the average compensation awarded by the ERA against an employer towards the employee for humiliation, loss of dignity and injury to feelings has increased from \$5,801 in 2008 up to \$10,861 in 2018 – an average annual compound growth rate of 6.4 percent each year over this period.

In comparison, over the same 2008–2018 period, the Consumer Price Index grew 1.5 percent each year, the Labour Cost Index grew 1.8 percent each year and the Producers Price Index for output prices grew 1.7 percent each year.

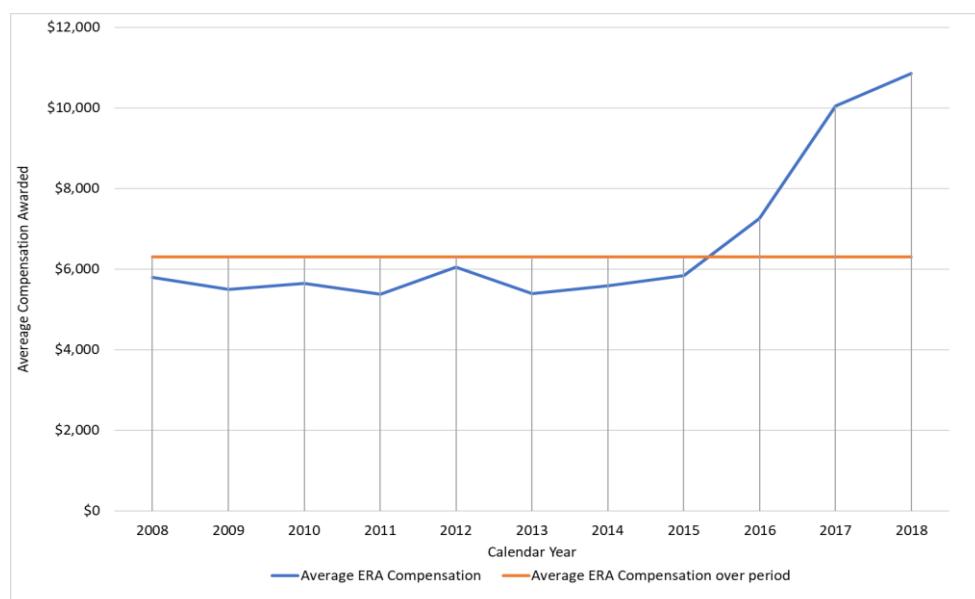
Table 4 Compensation awarded to employees for humiliation, loss of dignity and injury to feelings

Year ending	EC decisions (number)	ERA decisions (number)	EC compensation awarded	ERA compensation awarded	Average EC compensation	Average ERA compensation
2008	9	194	\$97,997	\$1,125,411	\$10,889	\$5,801
2009	5	186	\$54,499	\$1,023,912	\$10,900	\$5,505
2010	14	190	\$99,494	\$1,071,916	\$7,107	\$5,642
2011	12	173	\$80,996	\$930,922	\$6,750	\$5,381
2012	11	226	\$73,496	\$1,368,394	\$6,681	\$6,055
2013	18	199	\$158,994	\$1,074,410	\$8,833	\$5,399
2014	12	186	\$75,994	\$1,040,417	\$6,333	\$5,594
2015	20	169	\$195,993	\$985,918	\$9,800	\$5,834
2016	10	157	\$115,498	\$1,138,931	\$11,550	\$7,254
2017	5	133	\$69,499	\$1,336,436	\$13,900	\$10,048
2018	2	72	\$36,500	\$781,966	\$18,250	\$10,861

Source: Compensation tables – MBIE: <https://www.employment.govt.nz/about/employment-law/compensation-and-cost-award-tables> – average and total compensation derived by NZIER

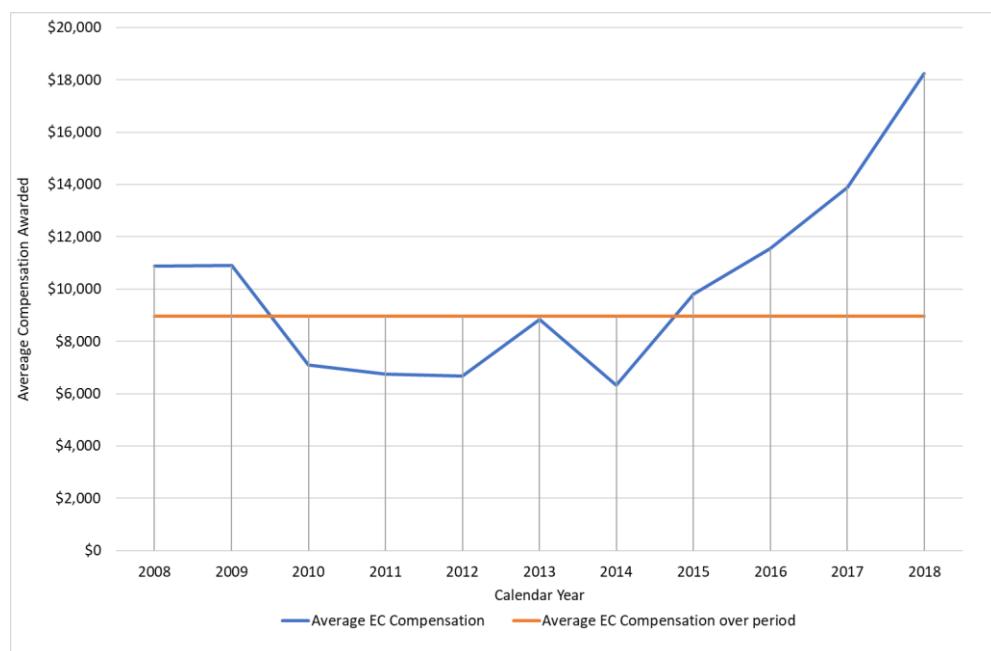
Compared to previous years, the average compensation awarded in both the ERA and the EC for last three reported calendar years are noticeably higher (Figure 2 and Figure 3).

Figure 2 ERA average awarded compensation



Source: compensation tables – MBIE: <https://www.employment.govt.nz/about/employment-law/compensation-and-cost-award-tables>

Figure 3 EC average awarded compensation



Source: Compensation tables – MBIE: <https://www.employment.govt.nz/about/employment-law/compensation-and-cost-award-tables>

Increasingly, businesses are getting both compensation and costs awarded against them. In 2018, 79 percent of hearings in the employee's favour were rewarded by both increased compensation and costs against the employer. For the employee, seeking an ERA decision has become less costly over time (because more costs are being awarded) and more lucrative (because more compensation is being awarded).

Table 5 ERA hearings where employees receive compensation and costs

Year ending	Employee successful and awarded costs (number)	Employee successful and awarded compensation (number)	Employees awarded compensation AND costs (%)
2012	104	226	46%
2013	146	199	73%
2014	102	186	55%
2015	81	169	48%
2016	113	157	72%
2017	105	133	79%
2018	57	72	79%

Source: Compensation tables – MBIE, calculation NZIER

5. Previous research

NZIER looked at previous compliance cost research to help shape up its questions for business and to discover whether its findings around the positive benefits of H&S and consumer protection regulation were atypical.

We found a mixed story about the impact of compliance costs: no one piece of research was definitive, conclusive and robustly quantitative. The University of Otago results showed that the business within the same industry can have very different, potentially extreme, views on the compliance costs they face.

Common threads running through results:

- The KPMG survey cited by the Commerce Committee, the BOS and the Massey Survey all highlight regulatory change as significant compliance costs sources.
- The Massey survey and the SBDG highlight the inability to dismiss non-productive workers as a source of regulatory-based economic distortions.
- The BOS found employment regulation was, if anything, neutral or performance constraining.
- The Commerce Committee's focus on statistical reporting seems to be less of an issue in light of the BOS's finding that the time spent providing information to the government was not a large compliance issue for most industries. However, 37 percent of Massey respondents said that the cost and time of providing data outweighed the benefits they received.
- Both the University of Otago and the BOS found H&S regulation is either neutral or business performance enhancing.

5.1. Inquiry into compliance costs for business

The Commerce Committee's 1998 Inquiry¹² into compliance costs sought to identify and report on compliance costs that were ineffective, duplicate or conflicting with the operation of efficient business. The Committee defined compliance costs to be:

...the costs to affected parties of interacting with government in meeting an obligation or obtaining a service. Compliance costs are incidental to the obligation itself and are often related to the processing and providing of information.¹³

The Inquiry's methodology surveyed eight SMEs to identify a range of compliance costs that the interviewed companies wanted the Committee to address. It also undertook a postal survey of 120 SMEs to verify the results of the interviews.

The interim report, released in May 1998, recommended that:

- statistical returns be made less frequent and less complex
- financial report exceptions ought to be created where all the shareholders are either directors or managers

¹² Commerce Committee, House of Representatives, 1998.

¹³ Ibid, page 4.

- the dates for PAYE, GST, FBT and other taxes ought to be streamlined.

The Inquiry also made some more general recommendations including:

- that information flows to government be rationalised so SMEs are asked for information once a year
- the establishment of a permanent, continual officials' committee to address compliance costs
- that every government Bill includes a statement about the impact of the Bill on business, either as a cost benefit analysis of the measures contained in the Bill or the RIS that is presented to Cabinet
- that each department develops quantifiable targets aimed at decreasing compliance costs and incorporates these as a key result area in its purchase agreement.

The Inquiry limited its definition of compliance costs to only include costs where:

...we believed we could make an immediate and practical impact in those areas.¹⁴

Consequently, it avoided accident compensation legislation, where it believed compliance issues had already been addressed.

The Inquiry wrote to government departments to request details of work done by each department to reduce compliance costs. It received 38 responses and found that 23 departments did not have or did not state they had policies that were aimed at reducing compliance costs. Six government departments who stated that they did not have specific compliance cost-reduction policies were departments that administered legislation that incurred compliance costs. However, they felt that none of those organisations affected SMEs.

The Inquiry considered the major review of compliance costs conducted by KPMG for the Ministry of Commerce and reported in 1997. The KPMG report found that, although each piece of legislation requires only a limited commitment by enterprises, when all government requirements are considered, the total regulatory burden was unrealistic for business.

The Inquiry considered that H&S, business law, a regulatory taskforce on compliance costs and “the development of a package of measures under the general heading of regulatory responsibility” were being addressed by Ministry of Commerce initiatives.

The KPMG report found business complained that the largest costs of compliance was:

- time and cost of understanding new legislation
- implementing new legislation requirements
- training staff in new legislation requirements.

The large amount of landmark legislation passed in the past 10 years had exacerbated compliance costs. However, some complaints arose from the inflexible approach of government agencies towards the legislation rather than the legislation itself.

¹⁴ Ibid page 10.

The Inquiry did not identify or consider compliance costs within the labour market domain.

5.2. The impact of business compliance perceptions of New Zealand firms

The Massey Report¹⁵ was commissioned by MED to better understand compliance commitments for New Zealand SME firms. Secondly, it sought to develop an appropriate methodology for assessing compliance perceptions.

The report built on an OECD methodology, where compliance costs impacted the time business spent complying, had a stifling effect on innovation and competition and imposed explicit cost onto business for external expert advice.¹⁶ After Treasury became involved in the study, its focus expanded to consider the impact of compliance on export performance.

5.2.1. Constraints on productivity and growth

Labour market, H&S, ACC and statistical reporting were the main issues identified by respondents in this study. Of the factors that diverted or distracted businesses from focusing on productivity and growth:

- 46 percent of business identified labour market regulations applying to releasing a non-suitable employee
- 37 percent identified ACC requirements
- 32 percent identified H&S arrangements
- 30 percent identified supplying employment or other data to government agencies.

The respondents who identified labour market issues as a distraction tended to be mature business with more than six employees, exporters and from the primary and manufacturing sectors.

Businesses across all FTE size and across almost all industries identified “arrangements expected when need to fire someone” and “ACC levy arrangements as they relate to your firm” as factors that divert and distract them.

Respondents from larger firms were more likely to identify “arrangements for health and safety of employees” as a factor that diverts and distracts them.¹⁷

¹⁵ Massey, Claire. 2003. *The Impact of Business Compliance: Perceptions of New Zealand Firms*. Wellington, New Zealand: New Zealand Centre for Small and Medium Enterprise Research, Massey University.

¹⁶ OECD. 2001. *Businesses' views on red tape: Administrative and regulatory burdens on small and medium-sized enterprises*. Paris: OECD.

¹⁷ Masset, Claire. 2003 *The Impact of Business Compliance: Perceptions of New Zealand Firms*. Wellington, New Zealand: New Zealand Centre for Small and Medium Enterprise Research, Massey University, page 5.

5.2.2. Costs and benefits

- 43 percent of respondents said that the cost and time applying to the process of releasing a person who no longer suits the business outweighed the benefits.
- 39 percent of respondents said that the cost and time applying to ACC insurance arrangements outweighed the benefits of the arrangements.
- 37 percent of respondents said that the cost and time of providing data outweighed the benefits they received.

5.2.3. Compliance and firm dynamics

- 56 percent of respondents said compliance time and effort had increased over the previous 2 years.
- 58 percent of respondents could identify a specific piece of regulation that impacted on their compliance levels and their firm dynamics.
- 64 percent of respondents could identify a piece of legislation they saw as potentially “ambiguous to interpret or apply”.
- 36 percent of respondents could identify a piece of legislation they saw as having the potential to “draw the firm into legal expenses”.
- 36 percent of respondents could identify a piece of legislation they saw as having the potential to “oblige the firm to engage outside consultants”.
- 33 percent of respondents could identify a piece of legislation they saw as having the potential to “leave a sense of unfairness with your firm”.
- 25 percent of respondents could identify a piece of legislation they saw as having the potential to “generate conflict and disagreement with regulatory agency staff”.

5.3. Quantifying compliance costs of small businesses in New Zealand

University of Otago¹⁸ researchers examined the financial and opportunity costs of compliance for a sample of small businesses in New Zealand using a survey that recorded the time spent and direct dollar costs to business over a period of 13 weeks. They also conducted interviews with each firm at the beginning and end of the survey to gather qualitative information together with the quantitative information.

Different firms had different attitudes to compliance costs. For the firms that did think compliance costs were a major issue, this was a strongly held view:

- for one firm, compliance was the reason for not expanding its workforce
- another owner said they would think again before going into business

¹⁸ Alexander, Robert, John Bell, & Stephen Knowles. 2004. *Quantifying compliance costs of small businesses in New Zealand*. Economics Discussion Papers Series No. 406. Dunedin, New Zealand: University of Otago. Retrieved from <http://hdl.handle.net/10523/980>

- another firm refused to work for some potential clients because of the compliance issues involved
- for some firms, compliance *was not* a time-consuming task – seven firms said the major problem with compliance costs *was* the time involved in complying.

Some types of compliance came in for more criticism than others. There seemed a genuine recognition of some value to the firm from ‘compliance’. Those that were perceived as doing the government’s work for them (for example, PAYE returns) were the least popular, while some aspects of the H&S regulations were looked on much more favourably.

Simply reducing the amount of time spent on each individual compliance task will not seem like an improvement to some firms. What is needed to satisfy them is a reduction in the number of tasks and a reduction in the external or monetary costs of compliance.

5.4. Small Business Council and the Small Business Development Group¹⁹

The Small Business Council was established in 2018 for a period of 12 months to support the Minister for Small Business after the previous SBDG was disestablished in 2017.

The SBDG was established in 2003 to provide a voice for small business within government and to advise government on small business matters. In 2016, it released its report on small and medium businesses in new Zealand.²⁰

The SBDG’s final recommendations to government dealt with the economic cost impact on small business.

5.4.1. Labour market

The SBDG felt the labour market was unbalanced against employers and disadvantaged small business.

Dismissals process

The employer’s perspective is not always fully considered in employment legislation. While workplace legislation provides for fair and safe workplaces, employment law related to dismissals needs to give greater balance and reflect the views of both the employee and employer.

Dismissal for issues other than misconduct seemed to be extremely complex and long.

Employee attitudes

Hiring poor employees costs businesses. Small business employees work closely together, and the success of the whole business depends on positive employee

¹⁹ <https://www.mbie.govt.nz/business-and-employment/business/support-for-business/small-business/>

²⁰ <https://www.mbie.govt.nz/assets/90fcb52f9f/small-business-development-group-2016-report.pdf>

attitudes. However, it is very difficult to dismiss someone with a poor attitude where that attitude is directly affecting the overall performance of a small business team.

Length of the 90-day trial

The SBDG believed the 90-day employment trial needed to be extended and did not always provide enough time to fully assess if an employee is the right fit for a business. An extended 90-day trial would also provide small business owners with options for managing poor employee attitudes.

Mediation unfair to small business

The SBDG wanted the government to review the employment disputes mediation process.

In mediation, they saw small businesses are being treated as large and assumed to have lots of resources, but small businesses do not always have the time or capacity or knowledge to effectively front these situations.

To limit personal grievances, the SBDG recommended that government review legislation to ensure more watertight risk-free processes that are more equitable.

Employment agreements

The SBDG wanted the government to provide additional support for small businesses by assisting them to develop employment agreements (not just providing a template). Customised employment agreements designed to suit specific industries could mitigate avoidable employment costs and disputes.

Parental leave

The SBDG felt paid parental leave continues to place cost and skill-shortage pressures on small businesses, particularly in provincial New Zealand. Small businesses in provincial areas report that it can be near impossible to find temporary staff with the right skills, and it is often difficult to hold jobs open.

Small businesses need the right staff at the right time to keep operating. Casual and fixed-term contracts could be considered less problematic for small business owners. However, the SBDG acknowledged that there are long-term issues with this approach.

Migrant workers

The small business sector relies on a smooth functioning immigration system to supply labour with particular skills or to fill seasonal demands in the business cycle. At times, the sector is frustrated by the bureaucracy that prevents the hiring or rehiring of good workers.

While there is strong advocacy from within central government that positions should be filled by New Zealanders first, the SBDG felt reality is that this is not always possible, particularly in areas of high employment where it can be very difficult to train New Zealanders.

The SBDG believed and have advised that government needs to be more aware of the different seasonal and regional requirements and the varied industry requirements when creating policy settings.

Immigration investor policy

The SBDG supported the notion that attracting more productive investment from migrant entrepreneurs will provide opportunities for New Zealand businesses. However, it believed there should be clear and acceptable standards of business practice, profitability and ability to generate jobs and exports.

SBDG considered the market should determine what businesses or industries are needed and that the government's role should be to fine-tune criteria to meet other specifications such as income or experience.

The SBDG felt government needed to interpret the market and provide prospective migrants with clear messages about exactly what industries and businesses were needed in a real-time mechanism, much in the same way that the skills lists is produced. It felt it likely that migrant investors were not always aware of the opportunities open to them.

5.4.2. Tax issues

The SBDG had consulted regularly with IRD over the design and implementation of their Business Transformation Project.

It felt the tax compliance burden on small business was disproportionately high and could be lowered through:

- the timing and the frequency of required tax payments
- clear communication for how tax penalties were calculated and applied to small business
- holiday pay calculations that are unnecessarily complicated.
- more flexibility in the tax penalty system – more flexibility by IRD was needed to address the difference in circumstances and attitude between those who will not pay and those who cannot pay.

5.5. Stats NZ's Business Operations Survey

Stats NZ's BOS is the only quantitative semi-frequently authoritative survey on business compliance. However, it has a few significant limitations.

The survey's target population is restricted to firms with six or more employees, with some institutional sectors excluded. For the 2016 survey, Stats NZ selected a sample of 7,995 from a total population of 39,453 businesses.

Stats NZ's business demographics identified New Zealand had 516,762 enterprises in total in 2016. Of these enterprises, 463,092 employed no employees or fewer than six employees. Consequently, the survey is designed to exclude approximately 91 percent of all New Zealand business and approximately 31 percent of New Zealand's employed workforce.

This survey is also designed to produce statistically significant results at both the industry level, and across different size groupings, but not across industry and size. The response rate reached 75 percent. The target response rate of 80 percent was not achieved due to the impact of the November 2016 Kaikoura earthquake.

The BOS is a modular survey that contains a repeating business operations module, an alternating information and communications technology (ICT) or innovation module and a contracted module.

The modular structure means the content changes each year as results are released. In 2012 and 2016, the contracted module focused on businesses' self-assessed perceptions of compliance costs from regulation.

5.5.1. Synthetic BOS data on both size and industry

NZIER was interested in BOS 2016 by industry and employee size category. Using BOS 2016 data and business demographics data on the composition of enterprises of different employee sizes within different industries, a synthetic dataset was made from BOS 2016 to reflect the combined effect of both size and industry dimensions using iterative proportional fitting.

Figure 4 to Figure 10 are derived from the synthetic dataset.

5.5.2. Interpreting BOS 2016

Stats NZ releases the BOS without interpretative commentary. Business can provide multiple choices to BOS questions, making interpretation sometimes difficult. However, the following results can be drawn from the regulation module of the BOS 2016 data.

Figure 4 Where is the regulatory burden?

Businesses report most of their regulatory burden is derived from a combination of adjusting to regulatory change, finding out what regulation compliance activity is required and complying with monitoring, audits and inspections.

Relatively few businesses spent significant time on dispute resolution processes. Supplying information to the government does not seem to be the large regulatory burden experienced by the Commerce Committee's Inquiry into compliance costs for business back in 1998.

Figure 5 Business regulatory compliance costs

Very few industries felt regulatory compliance costs have decreased, even moderately. Approximately, 15 percent of businesses don't know how compliance costs have changed, but the remainder feel compliance costs have stayed the same or increased. The mining, construction and financial service industries felt compliance costs had all increased significantly.

Figure 6 Business response to regulation

Raising the skill level of employees was the most frequently cited business response to regulation. Other enterprises sought to improve their existing products, processes or services.

The mining, construction and financial service industries, which felt compliance costs had all increased significantly, were also the industries most likely to report their increased use of outsourcing was a response to regulation.

Figure 7 Business performance from employment regulation

Across all industries, most businesses felt employment regulation neither constrained nor enhanced the business's economic performance. However, the next highest response was that employment regulation constrained business performance. Similar numbers of businesses said employment regulation enhanced economic performance as the proportion of businesses felt they didn't know how employment regulation affected their business's performance.

Administration and support services, agriculture and education all recorded the highest constrained economic performance proportion response.

Figure 8 Business performance from workplace safety

In contrast to employment regulation, most firms feel workplace safety neither constrains or enhances, but the next frequent response was that workplace safety enhanced business performance. The mining, art and recreation services and electricity, gas, water and waste service industries were most likely to record this response.

Figure 9 Effect of regulation on business performance

Considering all of the positive and negative effects that complying with regulation had on business performance (productivity, growth, ability to compete, ability to innovate and staff wellbeing), businesses across most industries felt regulation had no impact on business performance.

The 'no impact' response was most prevalent in the information media and telecommunications industry, followed by the professional, scientific and technical services industry. The no impact response was least prevalent within the agricultural industry.

The second most frequently cited response was that regulation had a moderately negative impact on business performance. The mining, finance and electricity, gas, water and waste service industries all recorded moderately negative responses. However, the electricity, gas, water and waste service industries were also most likely to report a positive response, creating a mixed picture.

Figure 10 Reason for increased compliance cost

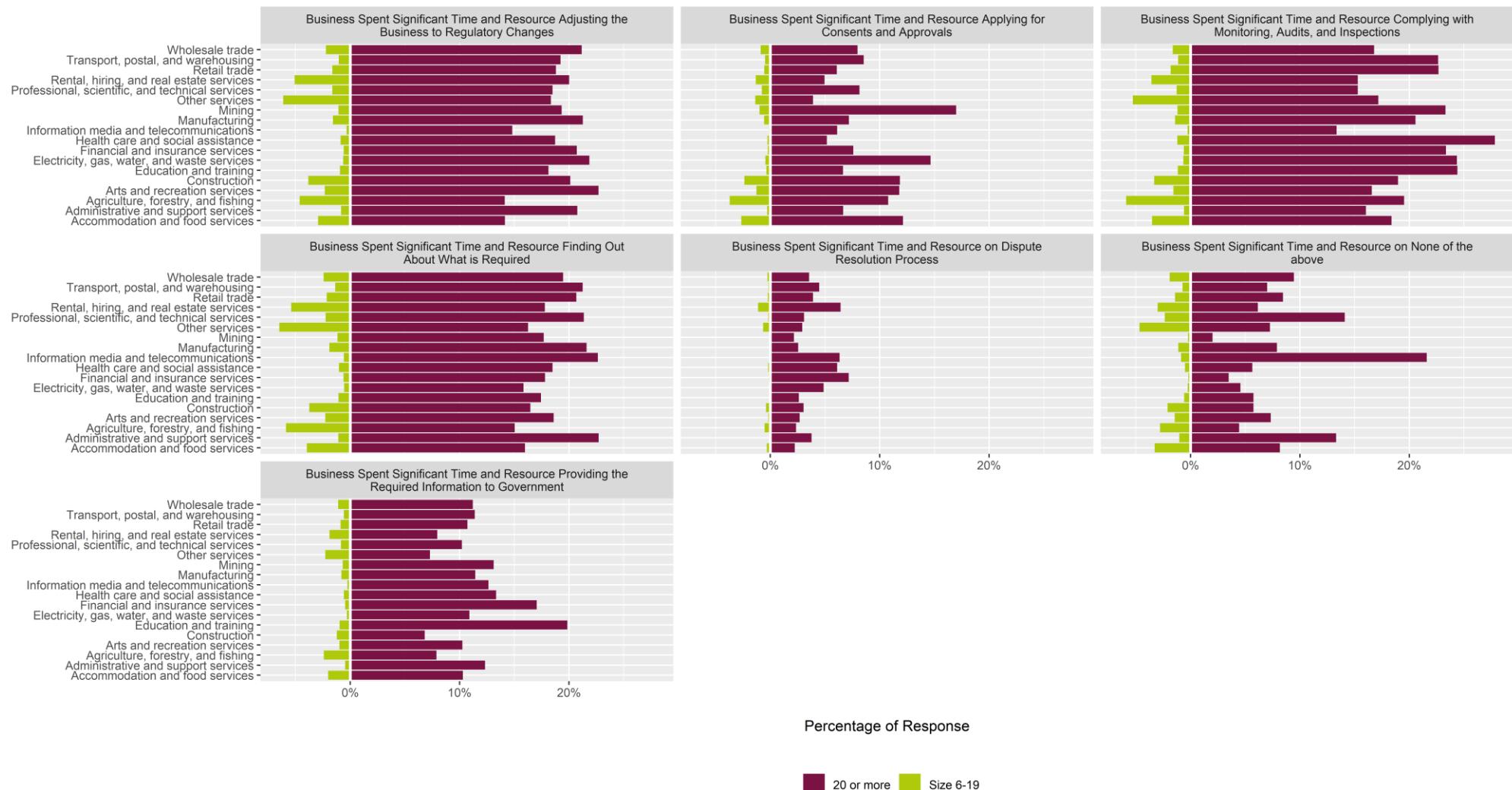
Complying with new regulation, increased compliance and the increased complexity of existing regulation were the most frequently cited reasons for increased compliance costs across all industries and different firm sizes.

The expansion of the business or 'other' reasons – both reflecting potentially the business changing within a static regulatory environment – were less important to compliance cost measurement than the effect a dynamic regulation environment has to relatively static businesses.

New regulation or increasing the complexity of existing regulation are major sources of compliance costs for enterprises.

Figure 4 Where is the regulatory burden?

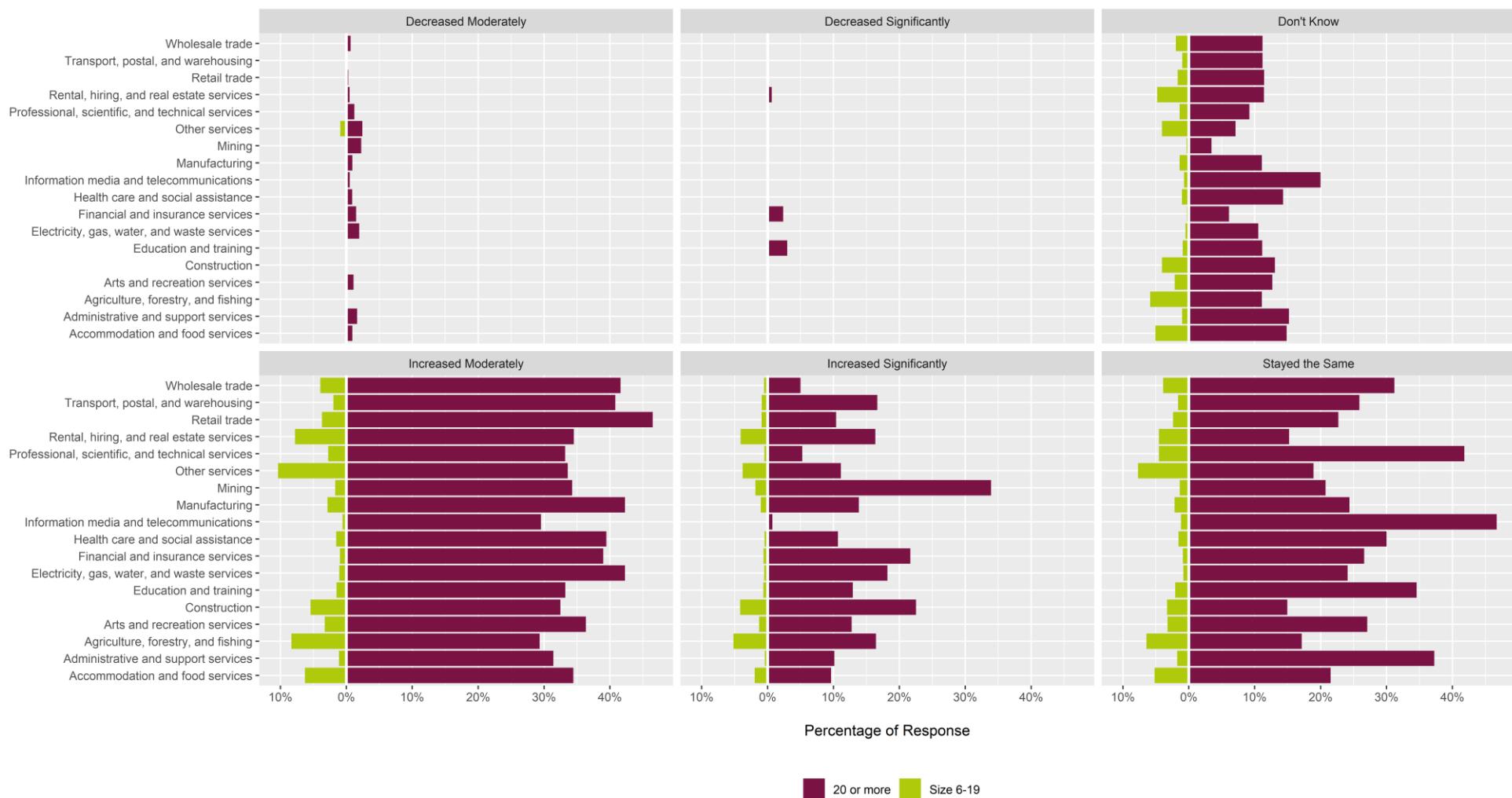
In the last 2 financial years, which of the following New Zealand regulatory requirements did this business spend significant time and resources on?



Source: NZIER – Synthetic Business Operations Survey 2016 Dataset, Line codes C0801–C0807

Figure 5 Business regulatory compliance costs

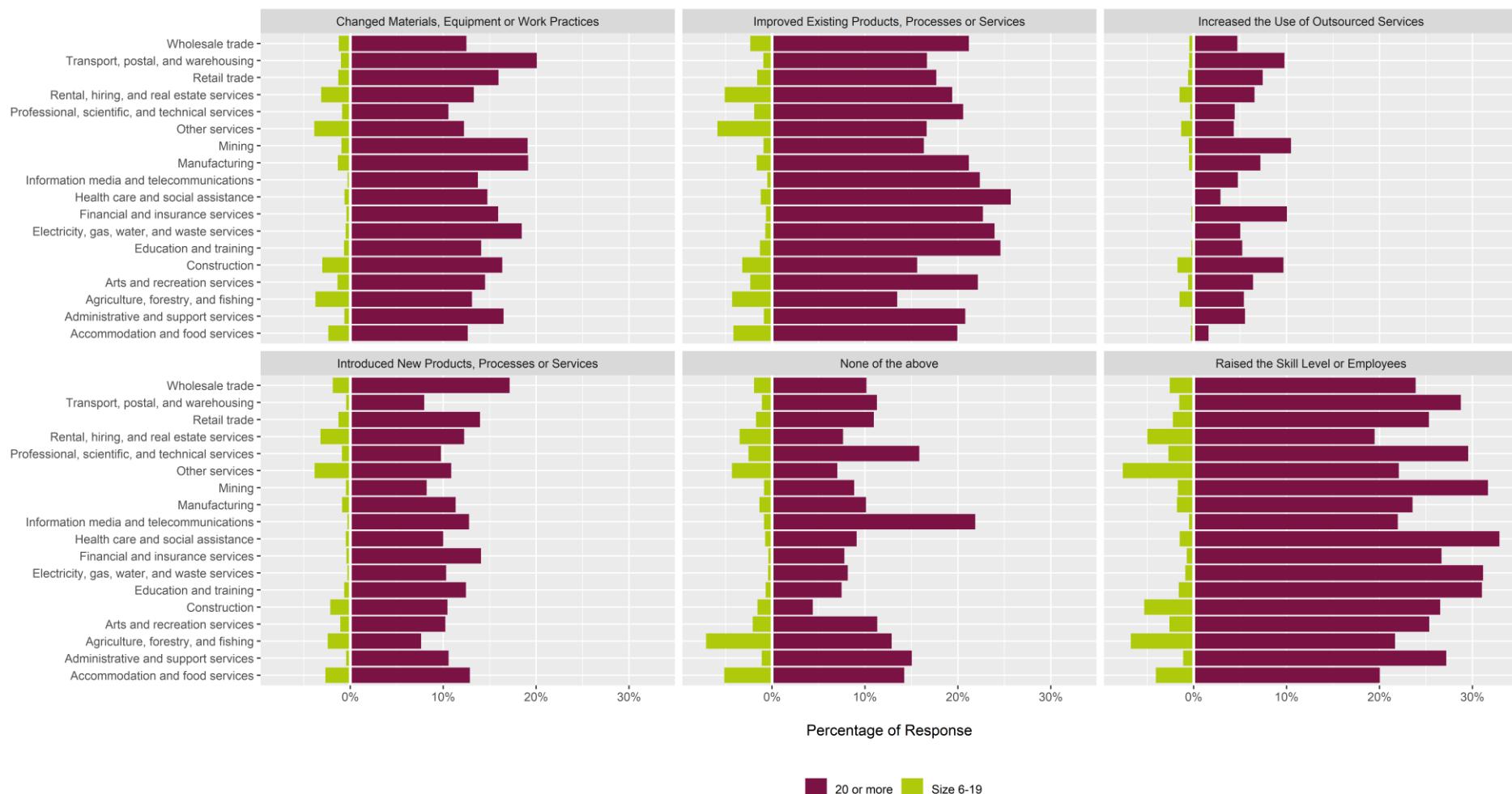
Over the last financial year, did regulatory compliance costs decrease, stay the same or increase for your business?



Source: NZIER – Synthetic Business Operations Survey 2016 Dataset, Line code C1400

Figure 6 Business response to regulation

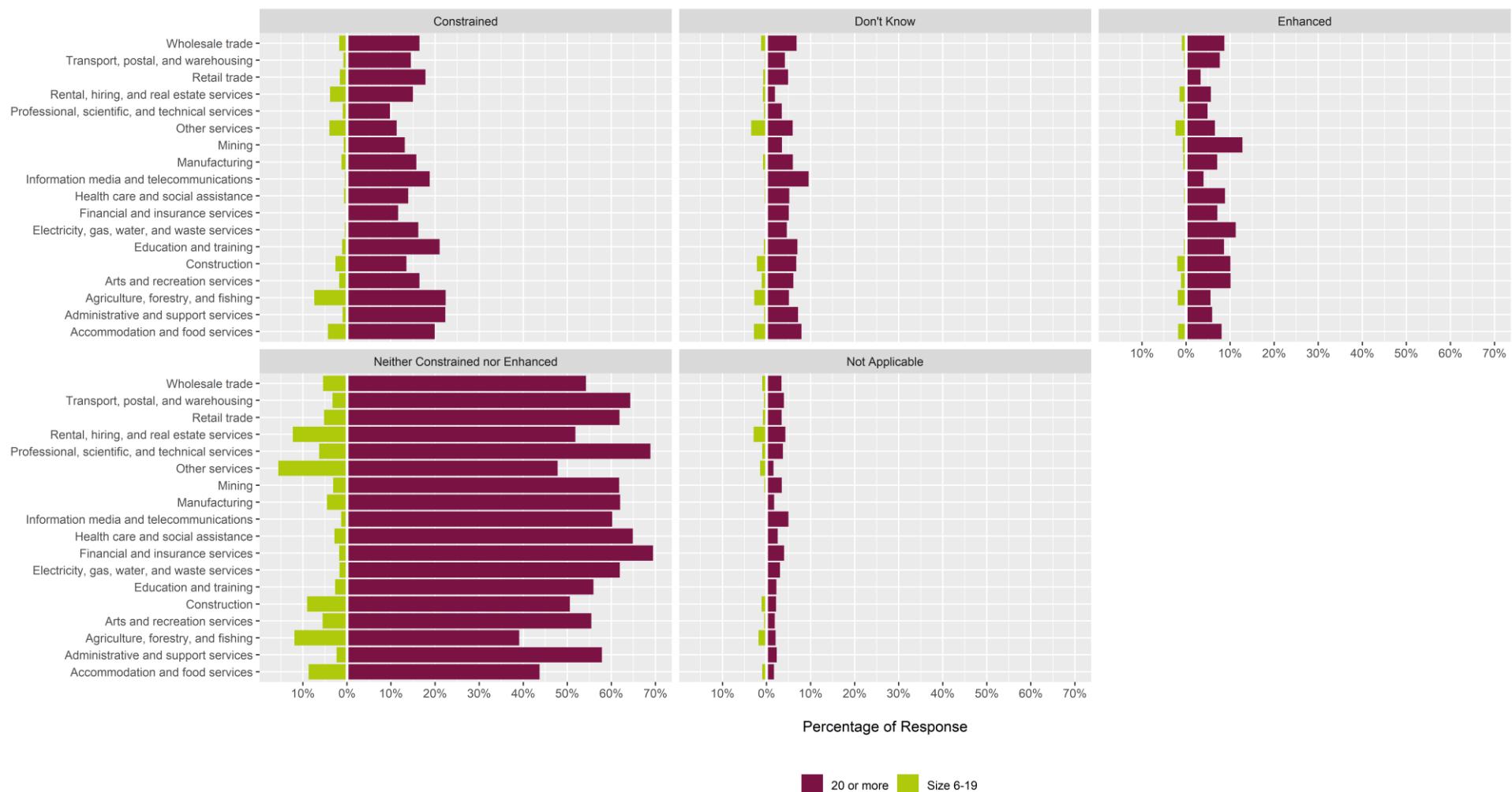
In the last 2 financial years, did this business take any of the following actions in response to regulation?



Source: NZIER – Synthetic Business Operations Survey 2016 Dataset, Line codes C0401–C0406

Figure 7 Business performance from employment regulation

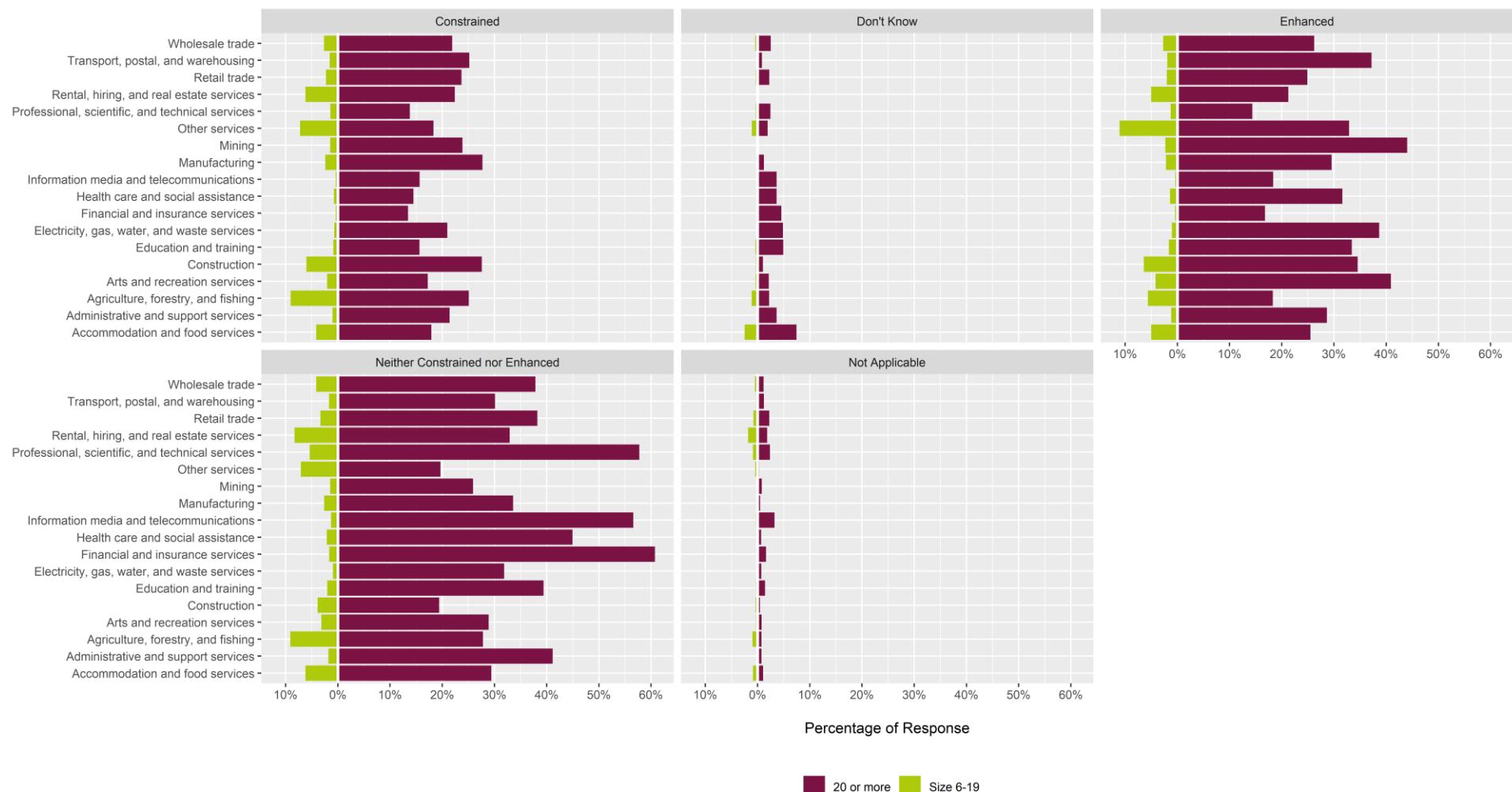
In the last 2 financial years, which of the following areas of regulation in New Zealand constrained or enhanced this business's performance?



Source: NZIER – Synthetic Business Operations Survey 2016 Dataset Line code C0601

Figure 8 Business performance from workplace safety

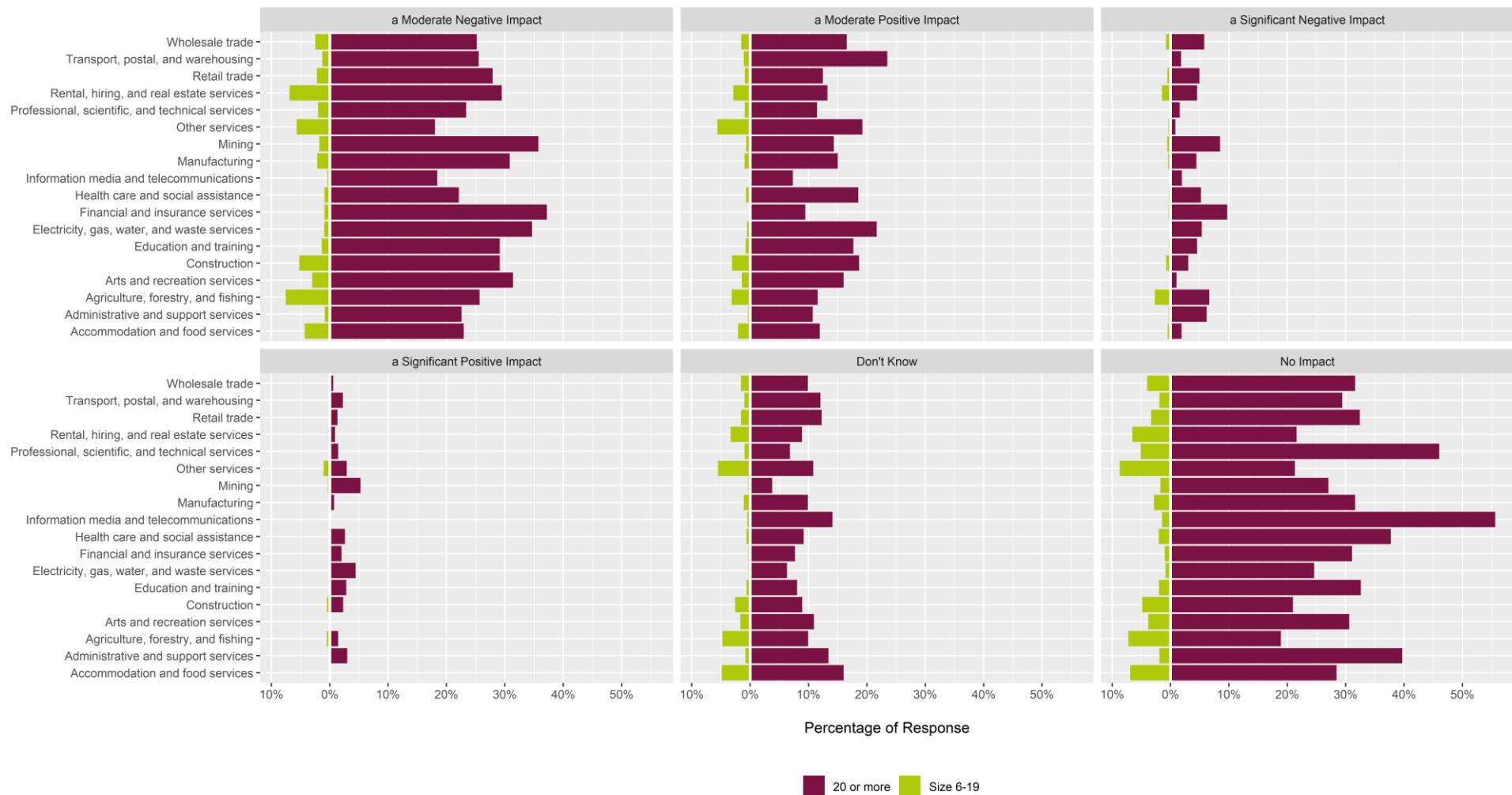
In the last 2 financial years, which of the following areas of regulation in New Zealand constrained or enhanced this business's performance?



Source: NZIER – Synthetic Business Operations Survey 2016 Dataset Line code C0602

Figure 9 Effect of regulation on business performance

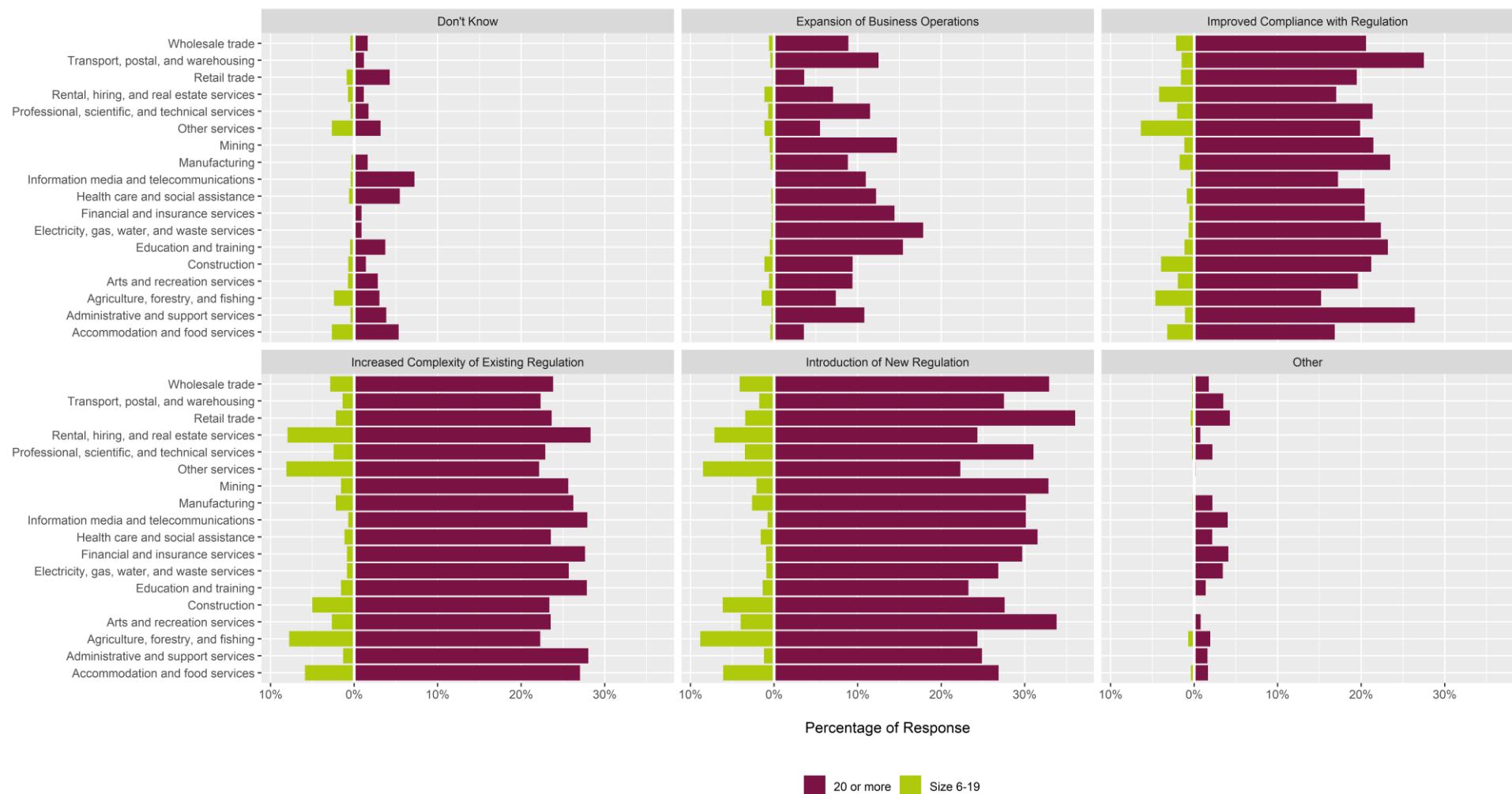
In the last financial year, what overall impact did complying with New Zealand regulation have on this business's performance? Consider all of the positive and negative effects that complying with regulation might have had on this business's performance (productivity, growth, ability to compete, ability to innovate, staff wellbeing).



Source: NZIER – Synthetic Business Operations Survey 2016 Dataset Line code C1300

Figure 10 Reason for increased compliance cost

What was the main reason(s) for the increase in this business's compliance costs over the last financial year?



Source: NZIER – Synthetic Business Operations Survey 2016 Dataset Line codes C1501-C1506

Appendix 1: Questionnaire for business

Regulatory costs on small business

Thank you very much for making the time available to meet with us on this topic.

What we are looking for is some indications of your impressions of changes in behaviour or time that you/your company has experienced over the last 12 months.

We are also using MBIE and Stats NZ datasets, but they don't have much post-2016, so we felt it was important to get some direct impressions from businesses.

Anecdotes can be very powerful so we will ask for those too.

We have a number of questions we will ask focused around four themes:

1. Labour market compliance
2. Tax compliance
3. Health and safety compliance
4. Consumer protection compliance.

We won't take more than half an hour of your time.

Your business

- Which sector?
- How many employees?
- Export facing?
- Looking to grow, consolidate, don't know in 2019?

Labour market compliance

State of the labour market?

- How easy is it to find staff with the skills you need compared to last year?
- Has the minimum wage affected your business?
- Are you having to offer more cash, leave, terms and conditions to hire or to retain staff?
- Are you finding New Zealanders or immigrants most available?

Permanent versus contract staff

- These questions focus on staff, hiring, rewarding and exiting and decisions you might be making with respect to hiring staff versus contractors.
- Are you planning to hire extra staff over the coming year?
- In making this call, how are you weighing up the benefits of permanent staff versus contractors?
- Has the preference for permanent versus contract staff changed over the last year?
- Why?

Managing employment relations

- Have you had to engage with the government (Labour Inspectorate) or unions over the last 12 months?
- If so, how has that experience changed – have you needed to clarify legal expectations or your obligations?
- Have you had any disputes
- Have you had to use mediation?
- Do you think that mediation outcomes favour employers or employees?
- Has this experience changed over the last year?
- Have you had to terminate a staff member over the last year?
- Did you use in-house support or an external advisor?
- Was the process simpler/harder than you expected? Has this experience changed over the last year or since you last had to exit someone?

Tax compliance

- Are you aware of changes in tax law? How has this affected your business over the last year?
- Have you had to contact IRD over the last year regarding tax obligations?
- Was this process easier, harder or about the same as you expected?
- Have you been in a dispute with IRD or been subject to an assessment or a penalty?
- Did you manage to resolve the issue(s) in-house or did you need external support?
- Was this process harder, easier or about the same as you expected?

Health and safety

- What has your company needed to do to understand its HSE obligations?
- Did you manage it in-house or did you need external advice?
- Are you aware of any changes in HSE that have affected your business over the last 12 months?
- Did you need to purchase equipment or engage specialised support or hire specialist staff in order to comply with the law?
- Do you think your workplace has become more or less productive as a result of complying with HSE obligations?
- In your view, has the cost of compliance been reasonable? And do the benefits outweigh the costs?
- Describe your experiences with WorkSafe or other government agencies regarding HSE – were they helpful, reasonable or did they add cost?

Consumer protection

- Consumer protection covers things like food safety, labelling, ingredients, country of origin, electrical safety etc.
- Have you needed to seek advice regarding your obligations?

- Have there been any regulatory changes over the last 12 months that affected your business?
- Were they signalled well in advance? Were you consulted? Were they easy to comply with (well designed)?
- Have you needed to engage with MBIE, Health, Council or other external regulators regarding a consumer protection issue over the last 12 months?
- If you had to guess, how much effect has meeting consumer protection requirements had on your business – was it positive (making you more competitive in some markets) or negative (cost) or neutral (just a cost of doing business that all your competitors also have to meet)?

Looking ahead

- Are there any other changes around how government is likely to be making that affect your business that we have missed?
- How confident do you feel in your business's ability to handle these requirements over the coming year?
- 1–5, with 1 being concerned that you will have to distract significant management attention to managing compliance and 5 being pretty confident that your business is across these issues.
- Would you have given a different score last year?
- What has changed?

Thanks very much for your time.