



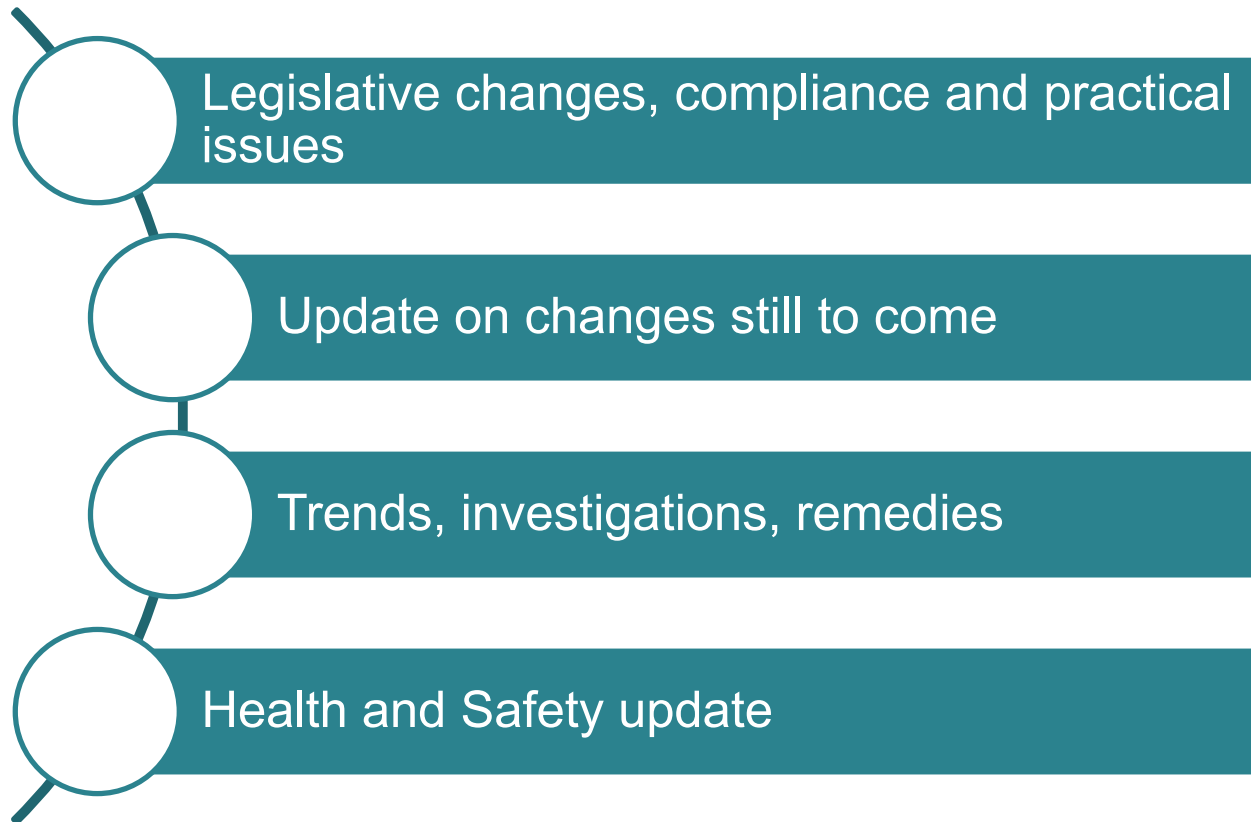
# Employment Law and Health and Safety Update

20 June 2019

**Kirsty McDonald**

| Specific advice should always be obtained before relying on any aspect of the content of this presentation or associated materials.

# Overview

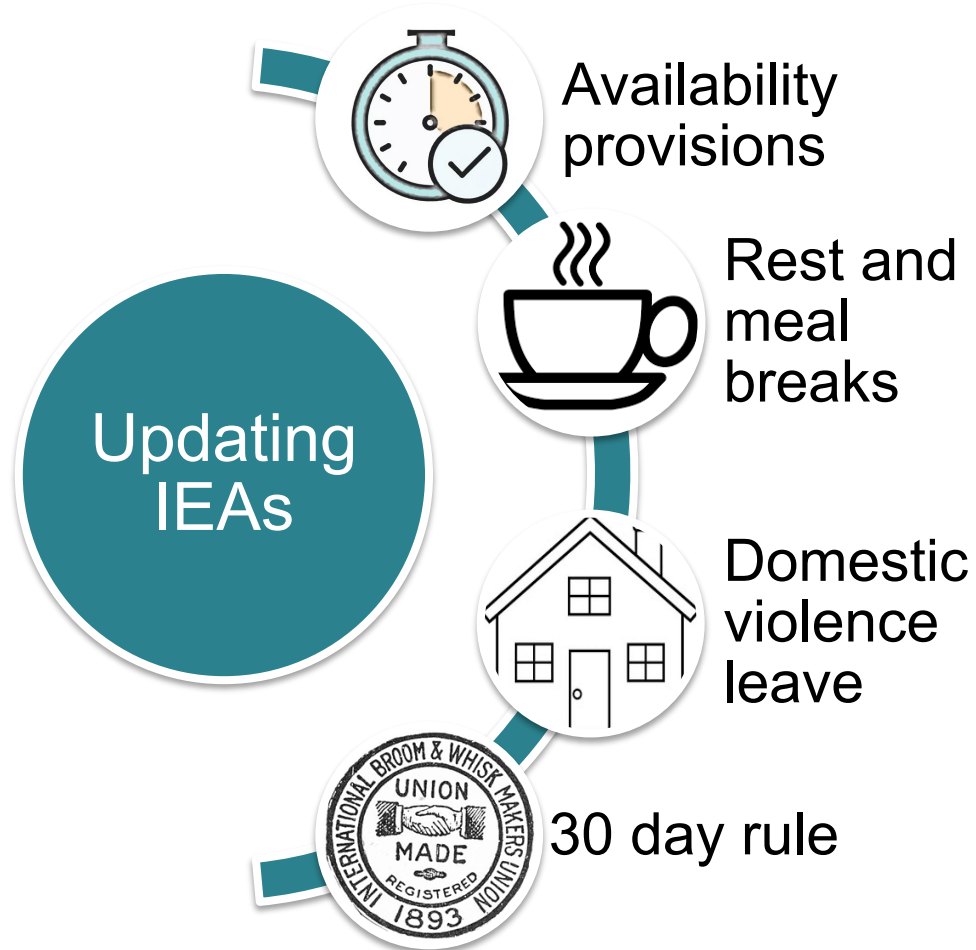


# Legislative changes, compliance and practical issues...

# Recap on Legislative Changes

Act	Changes
Minimum Wage	<ul style="list-style-type: none"> <li>• Increased to \$17.70 per hour on 1 April 2019</li> <li>• Government committed to raising to \$20 by April 2021</li> </ul>
Parental Leave Changes	<p>1 July 2018:</p> <ul style="list-style-type: none"> <li>• Paid parental leave increased to 22 weeks</li> </ul> <p>1 July 2020:</p> <ul style="list-style-type: none"> <li>• Paid parental leave will increase to 26 weeks</li> </ul>
Employment Relations Act 2000 changes – 6 May 2019	<p>From 6 May 2019:</p> <ul style="list-style-type: none"> <li>• Removal of 90-day trial period</li> <li>• Rest and meal breaks</li> <li>• Reinstatement</li> <li>• 30 day rule</li> <li>• Collective bargaining</li> </ul>
Domestic Violence – Victims Protection Act	<p>From 1 April 2019:</p> <ul style="list-style-type: none"> <li>• 10 days paid domestic violence leave</li> <li>• Statutory right to request short term flexible working</li> <li>• New ground of personal grievance and discrimination</li> </ul>

# Ensuring compliance



## Practical issues

Domestic  
violence leave

Proof?

Confidentiality

Probationary  
periods

Personal  
grievances

3 or 6 months -  
time to  
improve?

30 day rule

Enter IEA  
before or after  
30 days?

Concerns with  
passing on

**Update on legislative changes still to  
come.....**

# Proposed Legislation Changes

	Proposed Changes	Current Status
Fair Pay Agreements	<ul style="list-style-type: none"> <li>• Create a system whereby minimum employment terms can be imposed for entire industries</li> <li>• If either 10% of workers or 1000 workers in an industry instigate the process</li> <li>• Public interest trigger.</li> </ul>	<ul style="list-style-type: none"> <li>• Introduced</li> <li>• Working Group set up June 2018</li> <li>• Working Group report released December 2018</li> </ul>
Holidays Act review	<ul style="list-style-type: none"> <li>• The Taskforce is responding to issues of complexity, lack of clarity and non-compliance with the Holidays Act.</li> <li>• The Interim Report listed two alternatives the Taskforce is reviewing:               <ol style="list-style-type: none"> <li>1. Keep current system but provide greater clarity about calculating leave; or</li> <li>2. Create a new accrual system where a employee accrues leave from their first day of employment.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Holidays Act Taskforce is currently reviewing the Act</li> <li>• Produced an interim report 14 December 2018</li> <li>• Taskforce set to make recommendations in July 2019</li> </ul>

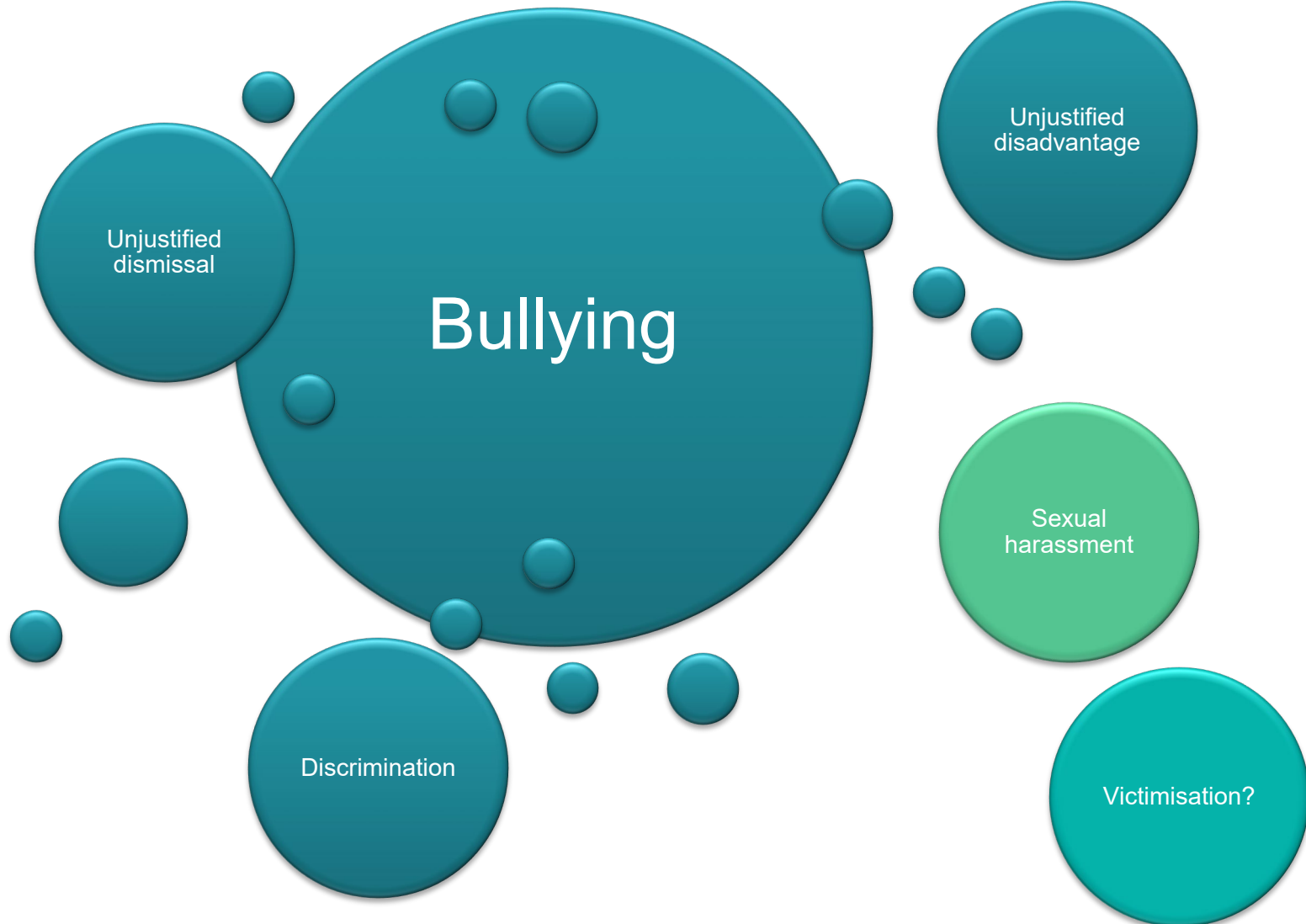


# Proposed Legislation Changes

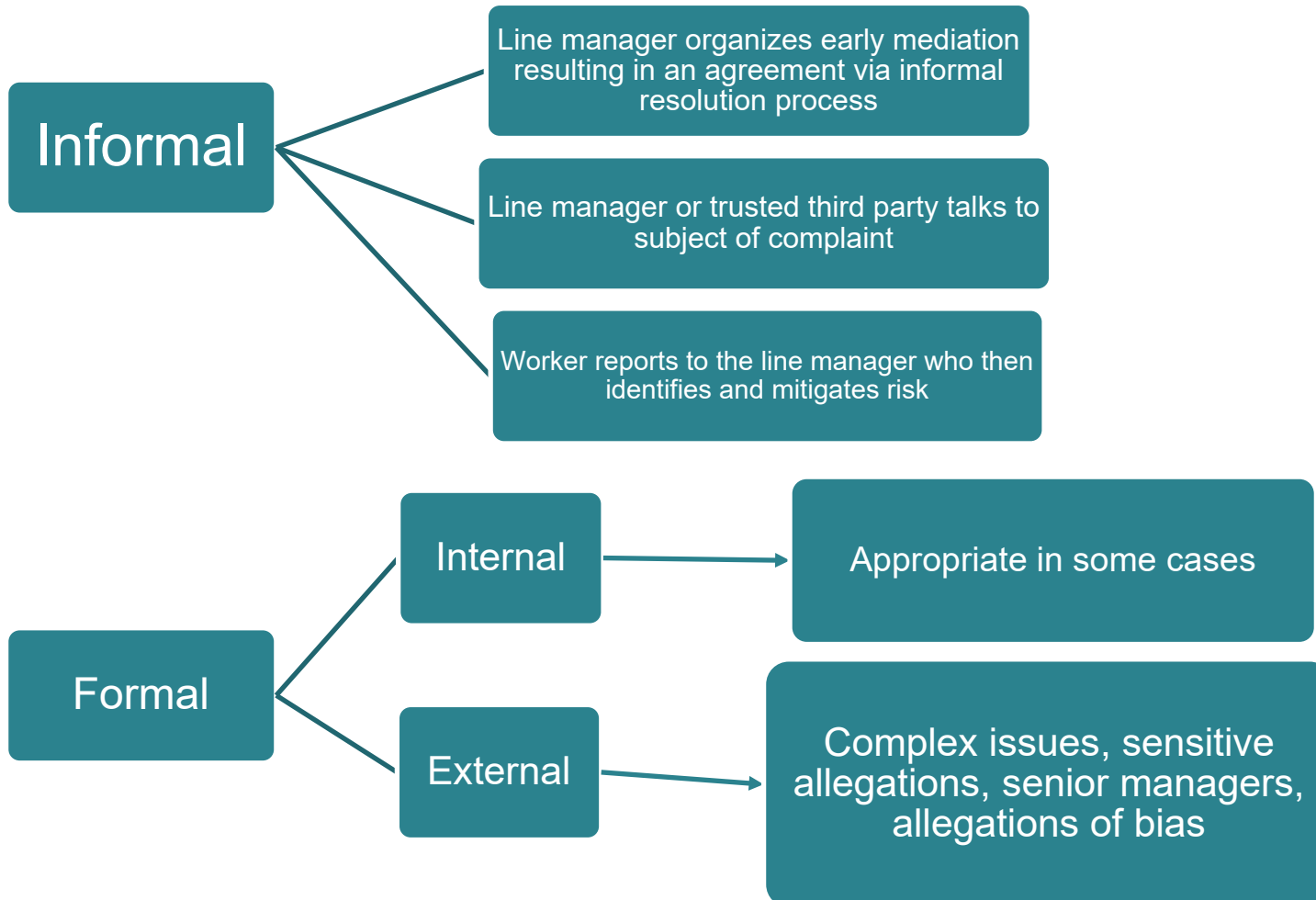
	Proposed Changes	Current Status
Employment Relations (Triangular Employment) Amendment Bill	<ul style="list-style-type: none"> <li>• “Employer” and “controlling third party”</li> <li>• Framework for employees to raise a personal grievance with their employer, and for the controlling third party to be joined in the proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>• Introduced March 2018</li> <li>• Due to have third reading</li> </ul>
Privacy Bill	<ul style="list-style-type: none"> <li>• Replaces current Privacy Act</li> <li>• Responding to requests for personal information</li> <li>• Strengthening PC powers</li> <li>• Mandatory reporting of privacy breaches</li> <li>• New criminal offences</li> <li>• Modernises privacy law for recent new technology</li> </ul>	<ul style="list-style-type: none"> <li>• Select committee report released 13 March 2019</li> <li>• Due to have second reading</li> </ul>

# Trends and investigations

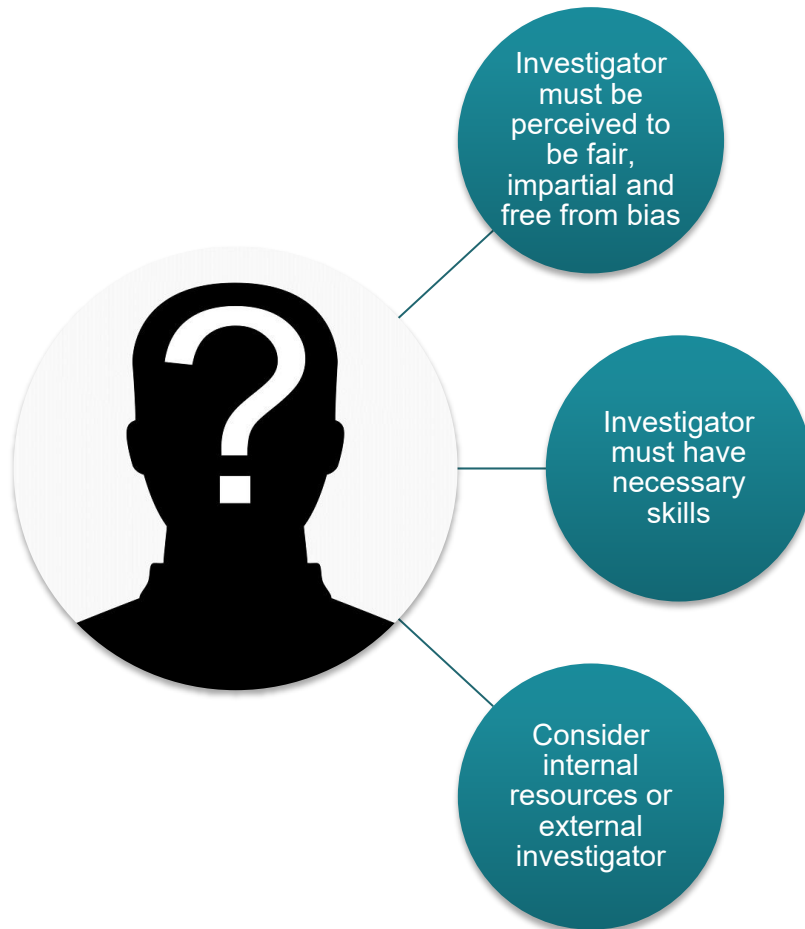
# Types of claims



# Informal vs Formal options



# Who should investigate and role of investigator



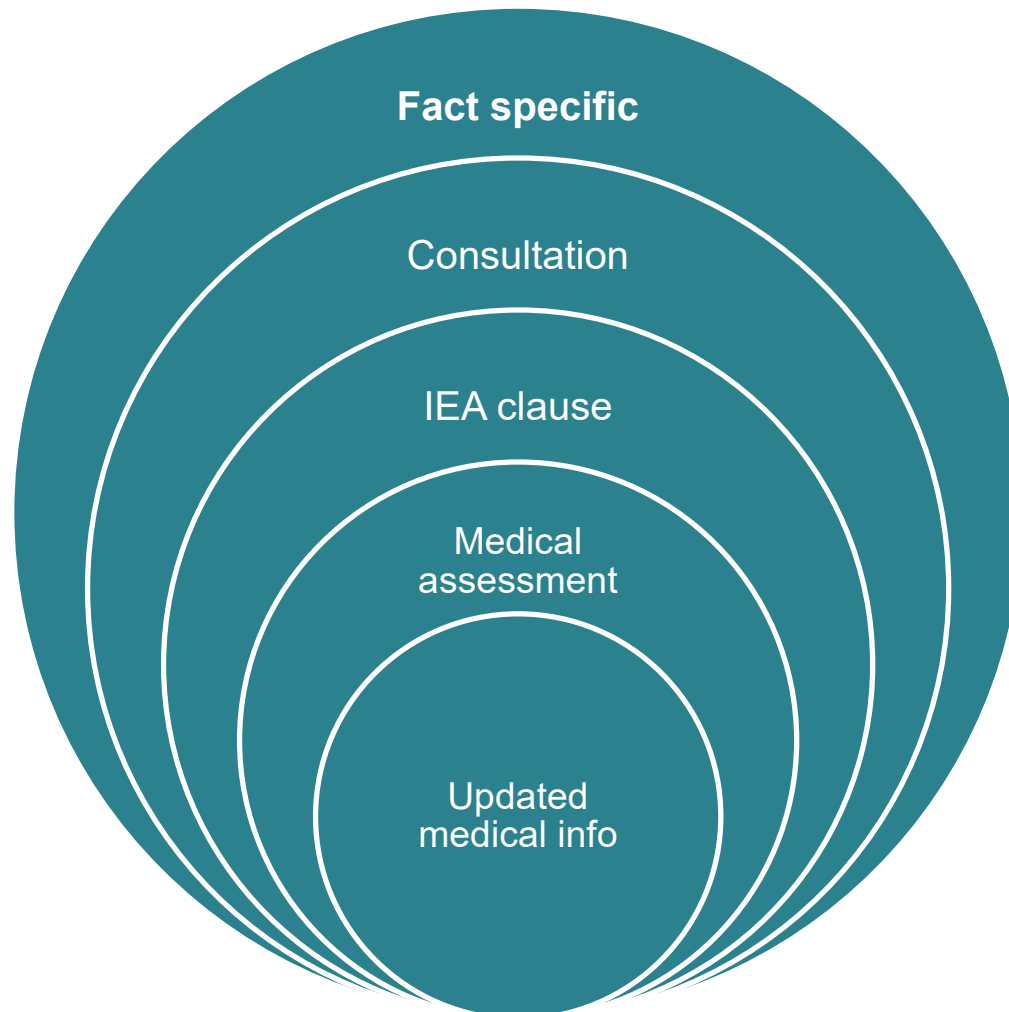
## Role of investigator:

- Prepare an investigation report
- Be fair and remain impartial
- Think critically – apply common sense and logic
- Manage the investigation – ensure confidence
- Maintain confidentiality as far as the process allows
- Evaluate evidence and make findings

# Tricky issues

			 <p><small>Tealie Turner</small></p>			
<p>Managing irrelevant or unfocussed responses – additional interviewee issues</p>	<p>Uncooperative participants</p>	<p>Accusations of bias</p>	<p>Witness credibility issues</p>	<p>Managing hostile witnesses</p>	<p>Detecting lies</p>	<p>Requests for Anonymity</p>

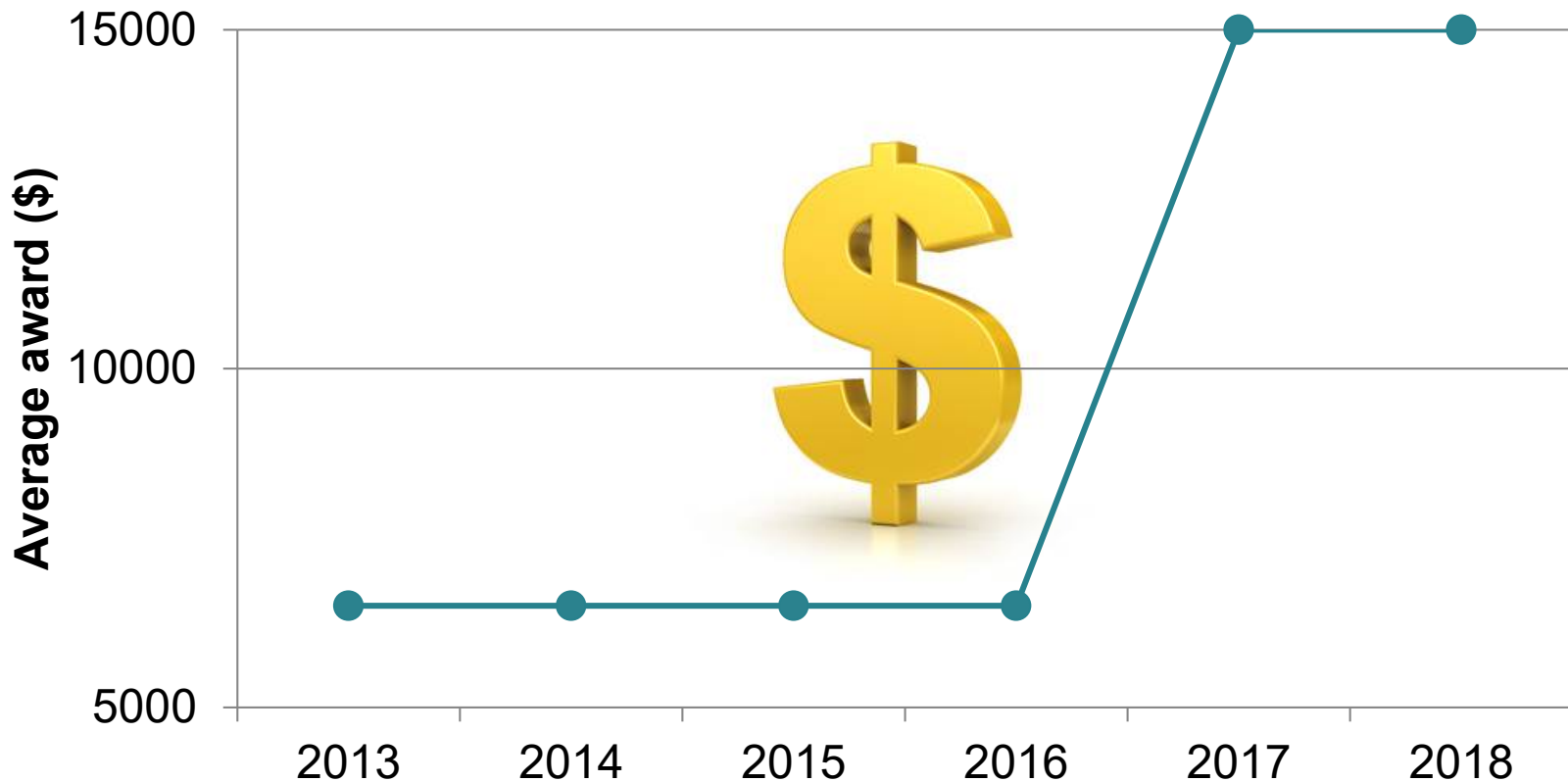
# Medical incapacity



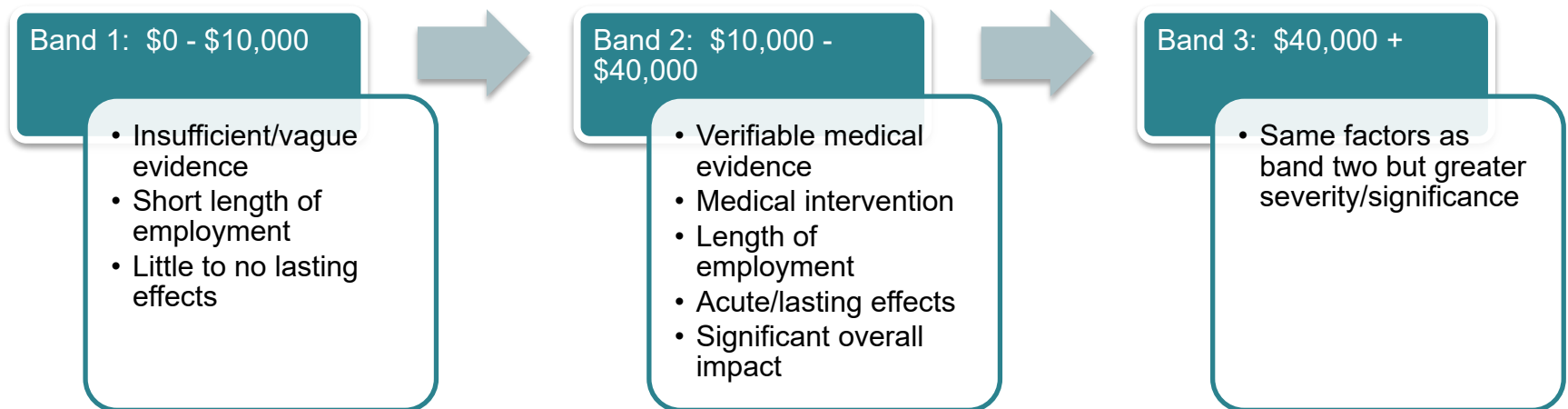
# Trends in remedies



# Increase in compensatory awards



# Remedies – Banding Approach to S.123(1)(c)(i) awards



## *Richora Group Limited v Cheng*

### Facts:

- Mrs Cheng suffered depression and anxiety
- Out of the workforce for 3 years
- Offered work with Richora Group – friends in Chinese community
- Employer concerned Mrs Cheng reported the company to IRD
- Employer changed locks and invited Mrs Cheng to a “serious meeting”
- Meeting held in her absence
- Pressure to resign
- Suicide attempt

### EC Found: unjustified constructive dismissal

- Awarded \$20,000 compensation (but would have awarded more)

# Recent Employment Court Decisions

***Postal Workers Union of Aotearoa Inc  
v New Zealand Post Limited [2019]  
NZEmpC 47***

*“Delivery Agents may be required to work reasonable overtime in excess of their standard hours, provided that work is voluntary on days which are otherwise non-rostered days”*

Waged

Guaranteed  
hours

No  
compensation  
for being  
available

# ***Morgan v Tranzit Coachlines Wairarapa Limited [2019] NZEmpC 66***

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Fixed term  
agreement

Genuine reason on reasonable  
grounds

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Financial uncertainty not enough if  
speculative

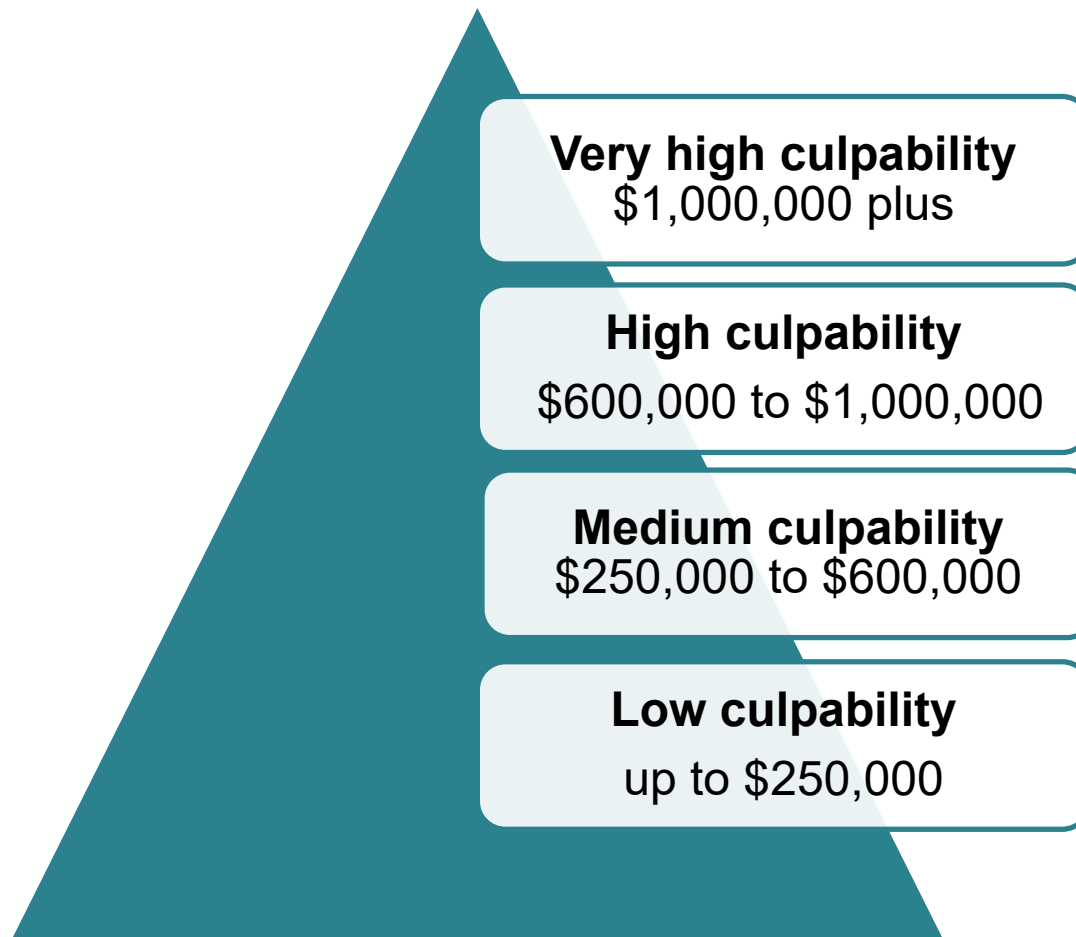
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Another option rather than fixed term?

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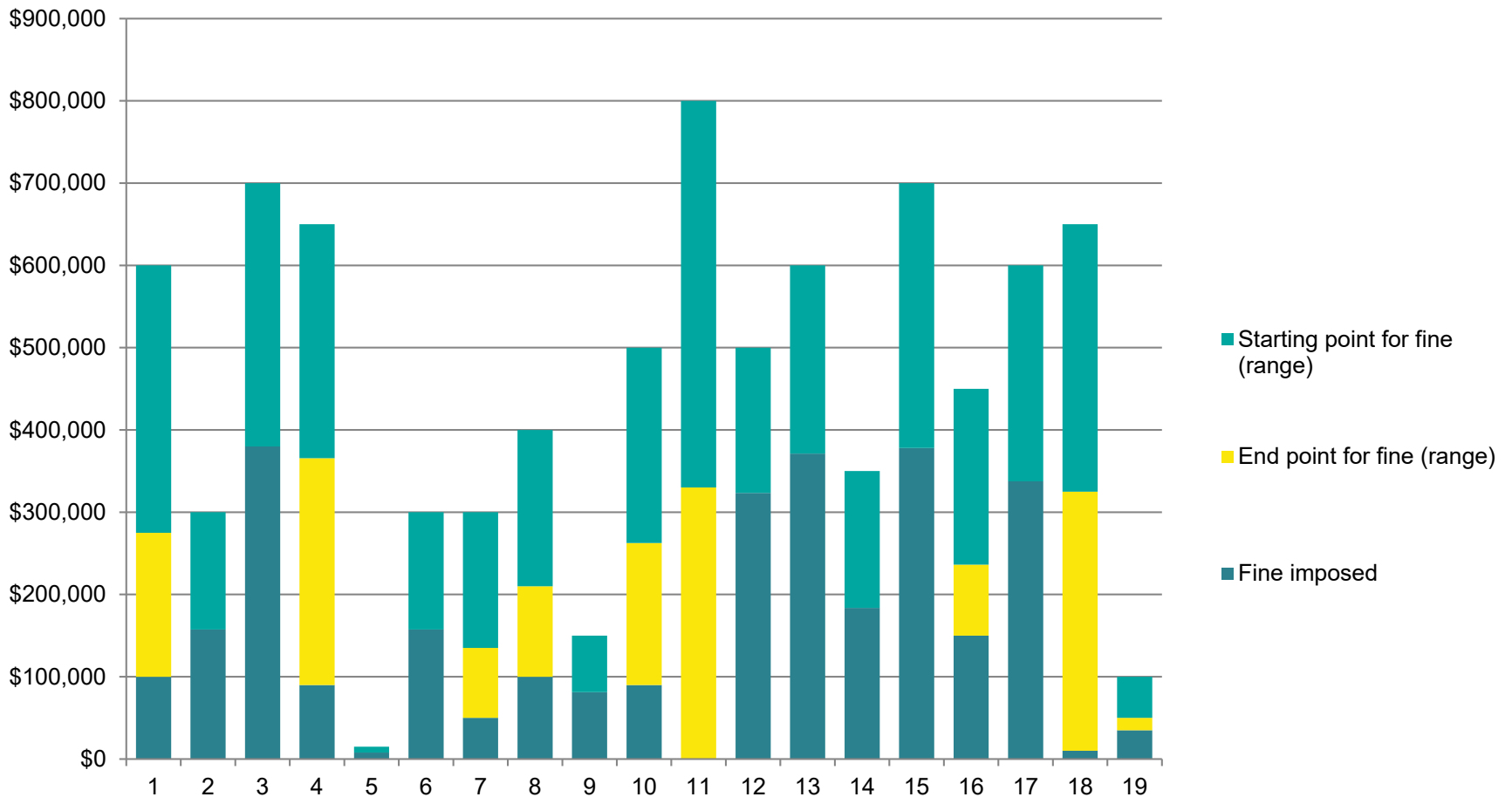
# Health & Safety Update

# High Court decision on sentencing



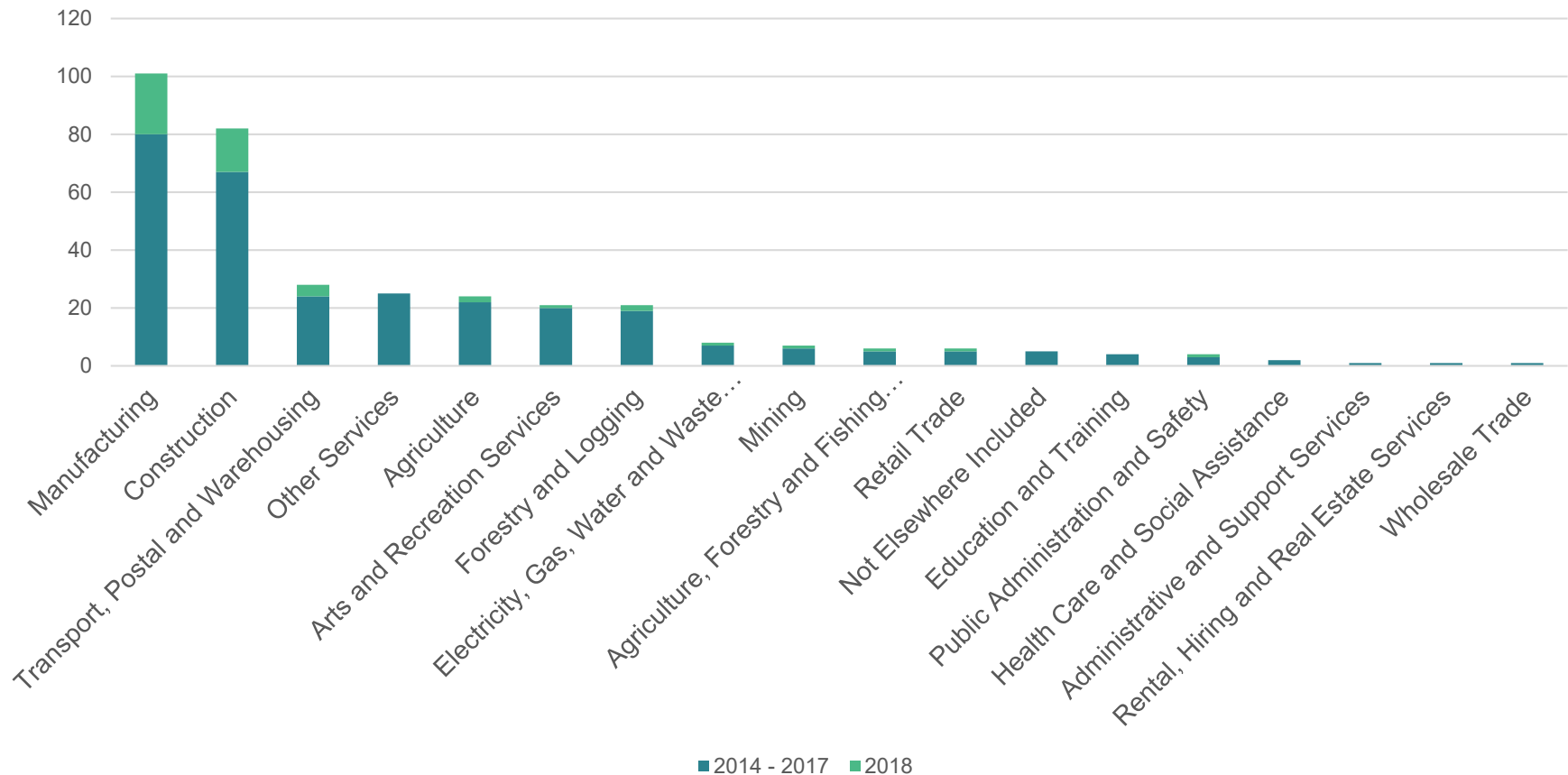


# Sentencing and penalties



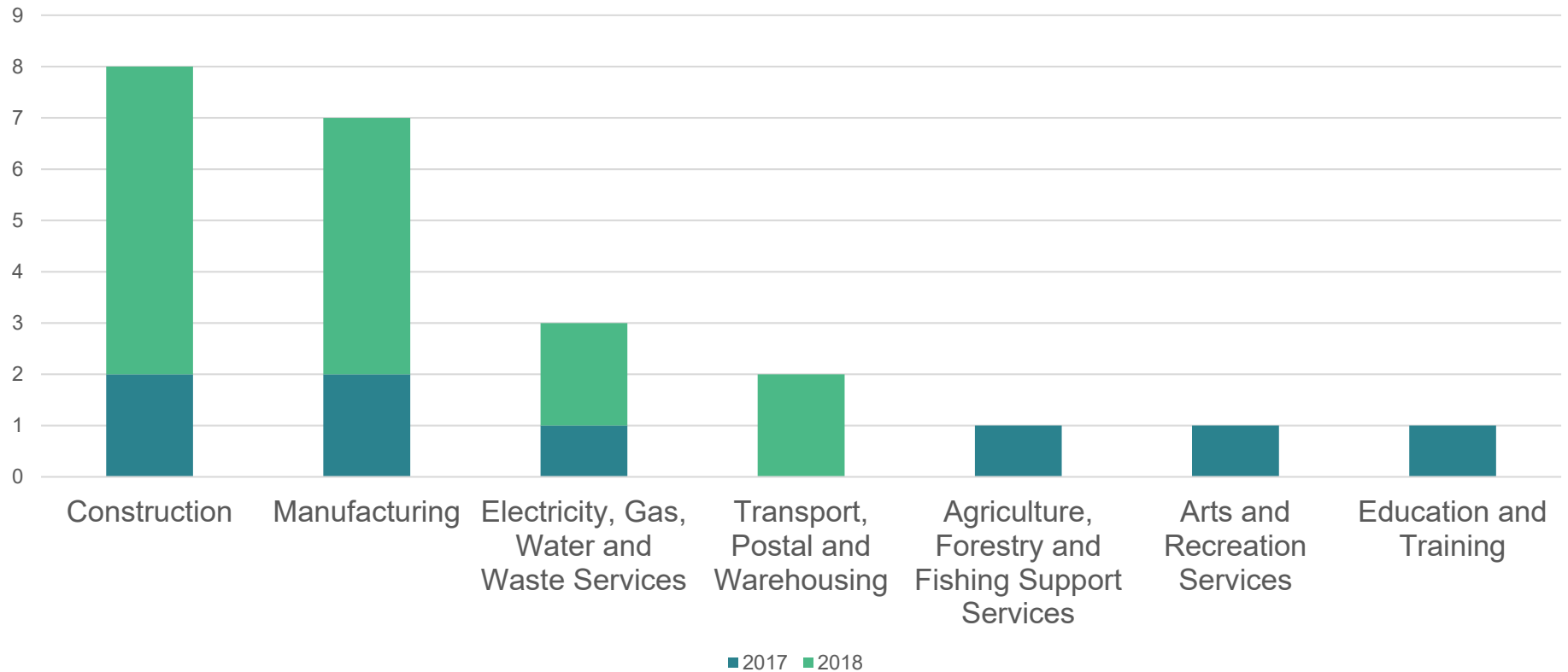
# Prosecutions by industry

Prosecutions by industry

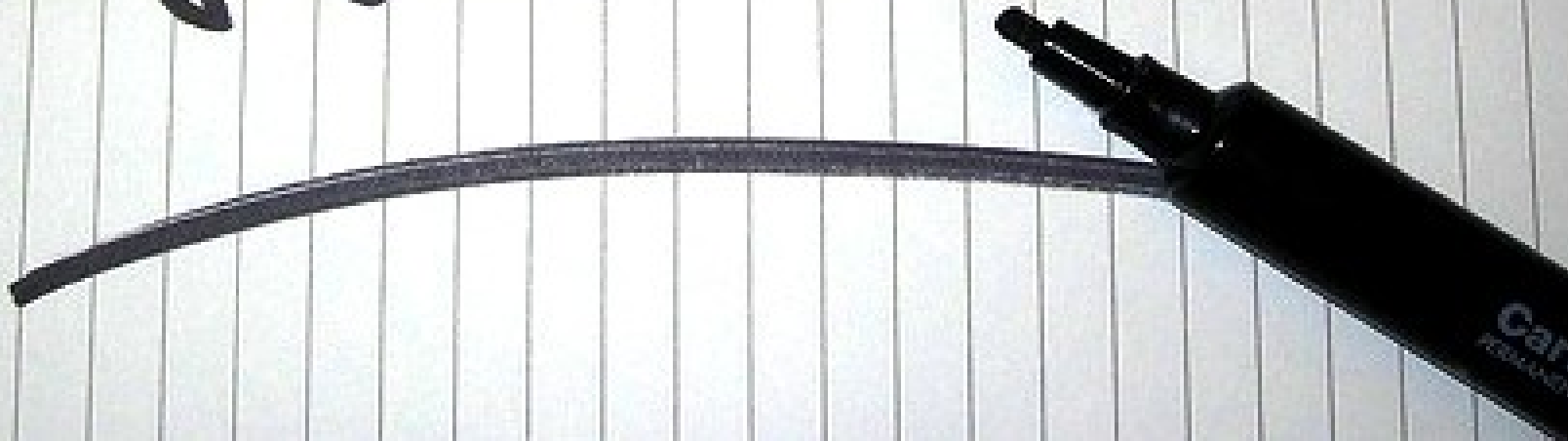


# Enforceable Undertakings

Enforceable undertakings by industry



Questions?





**Kirsty McDonald** Partner, Auckland  
d +64 9 374 7161  
m +64 21 905 567  
[kirsty.mcdonald@duncancotterill.com](mailto:kirsty.mcdonald@duncancotterill.com)

### Firm facts

- 4 integrated full service offices
- 200+ employees
- 15+ ASX and NZX listed companies work with us
- Global access to 19,000 high quality lawyers in 100+ countries through our membership of TerraLex legal services network.

Kirsty is an employment and health and safety specialist. She advises clients on all aspects of employment law across a broad range of sectors including manufacturing, construction, forestry, distribution, transportation, insurance and IT. A number of her clients are international businesses with a global presence.

Kirsty is also heavily involved in the health and safety space with extensive experience advising clients on a full range of health and safety issues and regularly assists clients facing prosecution

