

WorkSafe must improve the performance of its statutory role “to promote and contribute to a balanced framework for securing the health and safety of workers and workplaces”¹

1. Key Points

We argue that it is WorkSafe which is contributing to NZ’s declining workplace safety statistics. We intend highlighting WorkSafe’s erroneous decisions, policy statements and practices in support of our argument. It must improve.

- The data on the incidence of workplace deaths and FENZ call-outs associated with hazardous substances confirm that such substances present significant risks which parliament has prudently seen fit to regulate through the Hazardous Substances Regulations 2017² (the **Regulations**).
- Last June, DGC wrote to the Chair of WorkSafe identifying the many ways that WorkSafe has been failing New Zealanders in relation to its statutory responsibilities. Twelve months on, the only change has been external confirmation (especially through the independent report by Tim Smith in relation to specific issues we raised) of just how poorly WorkSafe has performed in administering the Regulations.
- DGC has tried privately to encourage WorkSafe to change its ways, with limited success. We continue to encounter material weaknesses in core skill sets essential for the regulator to possess and we intend demonstrating how some of its recent decisions and failures to train its people are detracting from the very reason WorkSafe exists.
- It was no surprise to us that in 2020-21 NZ’s scorecard (published in WorkSafe’s tardy annual report) for workplace safety showed deterioration in important safety metrics. Prosecuting entities after the Whakaari Island tragedy offers some superficial glamour for the prosecutor amongst the tragedy of many. David Laurensen QC’s excellent report into the events leading up to the Whakaari Island tragedy highlights the dreadful performance of WorkSafe in the performance of a critical preventative role. This highlights the problem – it is prevention that is the priority; almost any competent prosecutor can prosecute after massive failures.
- Working hard daily on prevention (which is what the Regulations are designed to achieve) requires an entirely different skill set, psyche, **training** and dedication. The workplace injury rates point to failures by both WorkSafe and by businesses and we see evidence of what WorkSafe does poorly every week of the year.
- If the regulator capitulates to large companies unhappy about their compliance obligations (as we suspect has happened on several occasions and we will highlight through our publications), we need to acknowledge that our regulator’s commitment to act like a “modern regulator”³ is failing in an old-fashioned way. People are dying and being hurt at work, while modernism is displacing the regulator’s stick – liberally used on those who don’t deserve it, but replaced with a benevolent olive branch for some companies operating well outside the Regulations. Why, we ask?
- We must also recognize that when any regulator provides concessions to large companies or groups, it creates the risk of unfair competition. All companies ought to expect the regulator to be promoting a level-playing field rather than creating a competitive advantage for some. WorkSafe

¹ Section 9 WorkSafe New Zealand Act 2013

² The Health and Safety at Work (Hazardous Substances) Regulations 2017.

³ This is the way WorkSafe describes itself in correspondence with us.

needs to be cognizant that it needs to inspect competently and thoroughly all businesses in the area, not just the one or two that have been notified to WorkSafe while they are working diligently on compliance. That *Maverick* can fly under the radar does not provide a reason for WorkSafe to allow many small businesses, and on several occasions very large ones, to do so. At times, inspectors must be driving past the highly non-compliant which they should be visiting to focus on those they should not. The *Top Gun* in business must do so in battle on a level-playing field. Costs of compliance are material and cannot be left for only some to pay.

- Companies that have chosen to follow WorkSafe’s approaches which are inconsistent with the law ought to be cognizant that (i) WorkSafe has no power to amend the law and therefore (ii) some of its decisions and policy statements (of no legal effect) ought not be followed. Most will know that WorkSafe prefers to give its contentious advice orally to avoid the repercussions associated with obvious errors. Insurers can be expected to follow the law and causation when dealing with insurance losses with little heed for what WorkSafe has published as “policy” - we would be pleased to consult for the insurers.
- We intend publishing a series of technical and anecdotal articles that will provide the substance to support our claims. Having failed to effect change by communicating privately and extensively with WorkSafe, we will attempt to attract the attention of those whose role it is in an effective democracy to hold the government entities to account.
- We know WorkSafe has many competent people – we applaud them while decrying the management performance that has created an ill-equipped and largely untrained workforce to administer what is amongst the most highly complex, yet well designed, parts of NZ’s legislation.

2. WorkSafe’s Data on Workplace Death and Injury⁴

When we think about work-related deaths and injury, we must also consider how many people are being poisoned weekly through exposure to toxic fumes that will cause the insidious diseases such as cancer over the medium term. WorkSafe’s statistics tell us that such death rates are more than double annual road toll fatalities.

Work-related health estimates

WorkSafe recently revised its work-related health estimates to take into account new international research, and other information to inform decisions to improve worker health.

- Work-related health deaths are estimated at **750-900** a year.
- There are an estimated **5,000-6,000** hospitalisations each year due to work-related ill-health.
- A worker is **15** times more likely to die from a work-related disease than from a workplace accident.

⁴ The quotes are taken from WorkSafe’s 2021 annual report.

In New Zealand cancers and respiratory diseases from airborne substances account for at least 31% of the total burden of work-related harm and an estimated 650 deaths per year. They account for 79% of the estimated 750 - 900 people who die every year from work-related health causes. You can find out

Despite more work from home in 2018-20, work-related injury rates increased.

TARGET INDICATOR 1: FATAL WORK-RELATED INJURIES (PER 100,000 FTEs)

REPORTING YEAR	2017/18	2018/19	2019/20	TARGET	2020/21	
Injury year ⁷	2014-16	2015-17	2016-18	2018-20	2017-19	2018-20
Rate	2.0	2.1	2.1	2.5	2.3	2.2 ^(P)
Difference from baseline 3.3 (2008-10)	-1.3 ↓	-1.2 ↓	-1.2 ↓		-1.0 ↓	-1.1 ↓

Source: Stats NZ from WorkSafe notifications and ACC claims data, December 2020

Relative to the target set by WorkSafe five years ago, work-related injuries are 50% higher and showing no signs of improvement.

TARGET INDICATOR 3: WORK-RELATED INJURIES RESULTING IN MORE THAN A WEEK AWAY FROM WORK (PER 1,000 FTEs)

REPORTING YEAR	2017/18	2018/19	2019/20	TARGET	2020/21	
Injury year	2016	2017	2018	2018-20	2019	2020
Rate	12.2	12.6	13.0	8.4	13.6	12.6 ^(P)
Difference from baseline 11.3 (2009-11)	0.9 ↑	1.3 ↑	1.7 ↑		2.3 ↑	1.3 ↑

Source: Stats NZ from ACC claims data, October 2021

3. FENZ statistics from its 2020/21 Annual Report

The 822 incidents attended related to hazardous substances stands out for us. The number was almost the same in the prior year.

84,688
Incidents attended

