

“Failures contributed to by WorkSafe itself” that must be stopped

A. The failure to prevent harm

This was the phrase coined by Judge Evangelos Thomas in a stinging rebuke of WorkSafe’s failures in the lead-up to Whakaari island. Readers of David Laurensen KC’s report will know the rebuke could have been significantly harder based upon the most astonishing lack of knowledge, action or responsibility demonstrated by WorkSafe in the lead-up to the Whakaari disaster.

Based upon what we observe weekly, it is near impossible to contemplate that the pre-Whakaari chaos at WorkSafe was abnormal, or an isolated failure. I am increasingly certain that those failures were then, and are now, symptomatic of WorkSafe’s norm, such is the picture of chronic failure that is manifest weekly. Much perhaps like Kiwibank being spawned by the Post Office and infused with archaic information systems that have been an ongoing weakness, WorkSafe too seems to have inherited, and then continued, the weaknesses of its predecessors without leadership to redefine, and then achieve, standards that NZ workers deserve.

Two publications in the last week or so provided further reminders of WorkSafe’s woes:

- The first was WorkSafe’s own alert¹ following a serious injury² sustained by Joshua Bowles who “had been in his job for two months”. He had received no training and was operating at heights in a hazardous environment when he fell and suffered a serious injury.
- The second was an article in Stuff³ describing the crushing injury sustained by Shea Bidois in circumstances that beggar belief, most notably because WorkSafe was not notified of the injury and seemed completely unaware of it. He was driving a loader which was in such poor condition that the roof of the cabin was jerry-rigged with pieces of timber. He suffered serious injury when the cabin collapsed on him.

There appears little doubt regarding the breaches of law by each of the PCBUs. We are, after all, dealing with the most basic elements of risk awareness, risk mitigation and avoidance. They all share the same characteristic of WorkSafe’s failure to prevent injury.

The question is what did WorkSafe do specifically to help prevent each of these accidents? This is, after all, the purpose of HSWA and the reason for spending more than a \$100 million annually on an administrator of the regime.

Consider these several factors.

1. Mr Bidois’ employer should have appeared on a WorkSafe list to inspect regularly because it operated with high hazards present. The workplace was also in Auckland, an easier place for regular WorkSafe audits. If WorkSafe inspected the location in the last two years, what were

¹ [Worker’s six-metre fall prompts industry call-out | WorkSafe](#) 17 April 2025

² 38-year-old Josh Bowles had only been in his job for two months and had no experience or training in working at height when he fell from a commercial rooftop in central Wellington. He spent six months in hospital recovering from a traumatic brain injury and multiple broken bones. The father of five still lives with continuous pain, and has been unable to work since the fall.

³ [‘I can hardly walk’: Crushed man’s agonising pain after near fatal workplace incident | Stuff](#) 20 April 2025

the findings? If it didn't do so, why not? There are two key questions – inspection frequency and their efficacy.

2. WorkSafe has at least 250 in its inspectorate. Using low productivity rates of 12 inspections per week, that is 600 per inspector annually, meaning that at this low productivity rate, at least 300,000 businesses ought to be inspected every two years. Did WorkSafe inspect either business?

When it comes to our specialist segment of the market, our findings about the Inspectorate's poor performance are astonishing. In fact, the organisation is hard wired to perform poorly. Thus, we circle back to the issue of what is the norm and what is the aberration. If the norm is "spectacular failures" why is that?

The bottom line is that the same old woeful WorkSafe is driving the metaphorical ambulance at the bottom of the cliff, and running the very real prosecution, while making no inroads into prevention of harm. The unfortunate aspect is that it is probably a sensible value proposition for irresponsible PCBUs to not spend on the precautions and to accept the risk of penalties if serious harm occurs. I suspect this is what still dominates the thinking across the market. This can only occur, or be rational, while WorkSafe continues to have serial spectacular failures. If the probability of discovery and prosecution before an incident is too low, the costs of compliance with HSWA don't make economic sense for those inclined to abuse their social licence to operate.

Given NZ continues to have near first-world high rates of workplace incidents per capita, prosecution of harm caused in breach of the law is akin to shooting fish in the barrel. WorkSafe, or another agency, could run the prosecutions which means that key question is what NZ is actually getting for funding approximately 300 WorkSafe inspectors.

B. Known knowns but no action taken

One of the recurring themes in major tragedies – Pike River, Whakaari Island, and the death of Jamey Bowring⁴ – has been the lack of any adequate preventative measures taken by a lacklustre regulator.

- Pike River was the motivating event for HSWA and the WorkSafe New Zealand Act 2013. The Department of Labour was ill equipped/ overworked, yet still knew about some of the hazards for workers in the Pike River mine...yet did nothing. There was also a dangerous theory about the PCBU being "reputable" one of the key dangerous biases for any auditor/ verifier/ administrator to have.
- The frightening aspect in relation to Whakaari Island is how little WorkSafe knew about what was happening on the island, despite having people whose job it was to know. The trigger for them to at least understand how little they knew was the request by the one licensed operator to discontinue the licence because no other competitors had every applied for them.
- Jamey Bowring was catapulted more than 100 metres to his death by the explosion of the petroleum tank, filled with hazardous vapour, that he was welding. Darren Handforth from WorkSafe was aware, before the incident, of the many failures at the workplace where Jamey was welding, but had allowed it to continue operating despite the identified risks. Soon after Jamey's death, Mr Handforth was promoted to the position of Head of High

⁴ [Mother of man killed at work speaks out: The \\$11m health and safety 'proceeds of crime' case - NZ Herald](#)

Hazards. If the breaches were so egregious that a prosecution was brought under the “proceeds of crime” laws, why was the PCBU allowed to continue operating?

Isolated incidents or part of the norm? We can shed considerable light on this from the perspective of our specialist hazardous substances segment of the workplace market which accounts for death from disease at a rate that is more than 10 times the accidental death causes. There is a very high probability that much of the daily harm caused by exposure to hazardous substances is undetected due to the insidious nature of the harm. One could reasonably expect WorkSafe to have compliance with the hazardous substances’ regime as a priority with its inspectorate displaying the skills, training and performance which are aligned with the risks. WorkSafe has, however, adopted a curiously one-dimensional matrix for strategic priorities, and, as a result, the priority is buried within the Manufacturing Segment.

C. Inspectorate - near complete lack of knowledge and efficacy in relation to hazardous substances

The lack of efficacy in the Inspectorate over a very long period – probably dating back to the very formation of WorkSafe – when it comes to the hazardous substances’ regime has been caused by several self-inflicted, compounding weaknesses:

- There is evidence of severe deficiencies in relation to how WorkSafe trains its people.
- The lack of training is an obvious cause of the Inspectorate’s lack of knowledge, the inevitable consequence of which is a lack of efficacy in how compliance is checked and enforced.
- This lack of knowledge results in workplace visits that are a near complete waste of time; worse, they create a false sense of compliance in the minds of largely ignorant PCBUs. “WorkSafe said everything was fine” is a refrain we hear too frequently from workplaces with the most astonishing failures that have been there for a decade.
- The astonishing lack of tools-of-trade for the Inspectorate is a further indicator that they are handicapped even before they set their appointment schedules.
- There is an overarching issue for management which is how they believe it is a fair or reasonable way to treat their employees – to send them out to perform roles that they simply cannot.

Most of the time, the average inspector sets out with a pen and a notebook to undertake complex tasks that s/he has not been trained to do. This picture of the Inspectorate is symptomatic of the state of the *boots on the street* that the Chair (appearing before the parliamentary select committee in late 2024 in the latest management vacuum) wanted to invest in by doubling, without facing up to the most fundamental weaknesses that it has never addressed. Two times zero is, unfortunately, zero, or less because of the additional false belief that such inspectors will engender with the PCBUs.

Most practitioners of anything know there is a need to apply skills regularly to stay current and to improve. If too long out of the habit of conducting appropriate, detailed audits, the skills atrophy and confidence dwindles. The end result is a fear of the topic.

Last week’s example of complete ineptitude was something we have seen many times before – a PCBU with 80 litres of class 3 was issued an improvement notice required them to obtain a

compliance certificate and to move the flammable liquids from the (lawful and complaint) type B storage to an AS 1940 cabinet inside. Wrong on every count.

Wrongly requiring compliance certificates to be obtained is indicative of the lack of basic training – after all, even for the novice inspector, one would assume that s/he knows there is a useful “calculator” available to all via WorkSafe’s website that would have given the correct answer. The bigger issue lies, however, in what the Inspectorate can, and does, walk right past, also unknowing.

Through our OIA requests and WorkSafe’s responses last year, recurring patterns have emerged of the Inspectorate avoiding the very reason they are at a PCBU’s workplace and being apologetic even when they discover long-term failures by the PCBU.

- An inspector flew from Wellington to Nelson and then spent an hour at the site and did not investigate any one of the dozen items of failure listed in the notification of refusal that that triggered her expensive trip in the first place.
- A senior inspector in Tauranga failed to notice, or deal with any of the itemised failures, when he made the trip (there is no evidence in his notes of any inspection taking place, hence he simply “visited”) to the PCBU.
- An inspector from Invercargill did a little better, at least pointing out some of the obvious deficiencies in the PCBU’s failure to train his people adequately, but curiously taking a photograph of unlawful storage inside the factory which she also labelled without any evident awareness that she was proving failure or the most basic technical description of what she had photographed (by her and the PCBU). Her notes record that she thanked the PCBU “for his professionalism in difficult circumstances.”

In this last example, we find, not just a lack of training, but the confusion that WorkSafe has when it encounters PCBUs who have not complied with their legal obligations for a long time. The almost apologetic demeanour evident in her notes applies during the tasks that are critical to prevention; this can be contrasted with the punitive side of WorkSafe when it came to pursuing the prosecution of the Whangarei school board of trustees. Prevention vs prosecution – the balance is round the wrong way.

D. Further OIA requests will show WorkSafe’s systemic failure for over a decade

I have seen enough to have a feel for the very large scale of the problems at WorkSafe. OIA requests are a way to show management who consistently fail to make inroads.

The most recent OIA requests will reveal what actions WorkSafe has taken at sites with large quantities of hazardous substances that are very highly unlikely to have been non-compliant for a decade or so. One example (‘Coro Street’) includes an 888kg LPG location which has been supplied LPG without interruption, has been certified every year, but has been significantly non-compliant throughout that decade. The only evidence of WorkSafe’s involvement in 5 years is an inspection that led to a requirement that the PCBU produce a hazardous substances inventory only. WorkSafe obviously walked right past the major issues which were hiding in plain sight on the way into the PCBU’s office.

This example shows a further obvious weakness in the regime – the poor standard that many compliance certifiers are allowed to get away with. It was the WorkSafe Chief Executive (back two from the current one) who in 2023 publicly acknowledged certifiers’ “skill deficiencies”. In so doing, he acknowledged a failure by his own team to made progress from the extremely negative

assessment of compliance certifiers in the 2019 HASANZ study – the worst by far of the safety organisations analysed. Mr Parkes can take the blame for most of those years from 2019 to 2023. The overall position when it comes to certifier competency and performance remains poor in many areas in 2025. I have put the direct proposition to the current Chief Executive that these results are a product of her own team's many frailties in terms of their skill, efficiency and bias. I await her response and an indication of whether she is prepared to be the first WorkSafe Chief Executive to be willing to meet to explain how she is going to effect change.

E. WorkSafe's policies are reinforcing the cycle of recurring failure

Coro Street provides a small example of the much wider problems:

- The PCBU doesn't understand the rules (ignorance is, of course, no excuse)
- The LPG supplier relies entirely on the certifier's certificate (a concern I have written about on our website)
- The certifier issues the same certificate of compliance every year despite the serious non-compliance
- WorkSafe relies on the compliance certificate and conducts no independent assessment – indeed, it stops going to the location.

There ought to be three circuit breakers – the LPG supplier has its own duties under HSWA, the certifier should do what he is obliged to do and WorkSafe should be policing the certifier and making its own assessment of the location. Instead, everyone keeps doing the same thing annually with the same recurring, and reinforcing, failures.

Despite the known failures of compliance certifiers, WorkSafe released a new set of procedures for its inspectorate when notifications of refusal to issue certificates are received. In short, the Inspectorate is allowed/encouraged to be ineffective. Stage one is to call the PCBU and ask whether they are making progress towards being issued a certificate. The second is to wait for a compliance certificate to appear in WorkSafe's inbox. In this way, WorkSafe completely evades any investigation for itself of what could be 10, 20, 50, 100 or more items of non-compliance.

The other option for the inspector to visit the location is leading to the wasted trips from the examples in

F. Shameful examples

The Joshua Bowles story is shameful, coming as it did more than a decade on from the introduction of HSWA. What caught our attention, in addition, was the lack of training provided by the PCBU. Training, including in relation to SOPs, is a very empowering way of preventing harm. It is one of many obvious items that WorkSafe should check regularly. Not only is there a legal duty to provide adequate training, it is surely one of the most basic components of a social licence to operate and a basic essential of prevention of harm.

When it comes to:

- working at heights (Bowles),
- working with defective equipment (Bidois),
- an active volcano (Whakaari)
- welding atop a petroleum tank full of hazardous vapours (Bowring) or
- a high-risk mine shaft (Pike),

the issues are physical and relatively obvious to trained persons (PCBUs, consultants, certifiers, experts).

Hazards associated with hazardous substances are frequently latent in the sense that inhalation of a toxic or hazardous vapour will ultimately lead to cancers and the long slow deaths from insidious diseases that account for more than the number of accidental deaths by a factor of more than 10. In high hazard environments, prevention of harm is critical; the provision of good training and providing and maintaining PPE in good working condition will be the difference between a long retirement and a slow, premature death. WorkSafe's statistics prove this. We have, therefore, known risks and known casualties but inadequate prevention.

G. Economic prisoners deserve to be protected

People who work in dangerous conditions are frequently economic prisoners of their employers. They are there because they need the income and feel they must endure the hardships that come with the jobs. The average NZ PCBU ignores the obvious conditions of his social licence to operate – ask the victims of any example in this note – and this is why we have both HSWA and WorkSafe. the Minister would benefit from contemplating her own family members being imprisoned in a job with exposures daily to high hazards – she would then better understand that the well-constructed HSWA regime can, and should, protect the most vulnerable people – principally workers – provided her administrator, WorkSafe, eliminates its recurring spectacular failures. Imprisoned people tend not to be let out to attend Ministerial roadshows. What the Minister calls “red tape” contains content and rules that could result in them living long enough to meet their grandchildren.

James Dunphy