

SECOND-RATE PERFORMANCE BY WORKSAFE IN NZ'S WORKPLACE ENVIRONMENT -OUTCOMES THAT ARE BECOMING THIRD-WORLD IN TERMS OF HEALTH AND SAFETY OUTCOMES, SET TO BE FURTHER IMPAIRED BY A MINISTER EVIDENTLY DEDICATED TO CORPORATE PROFITS AND NOT PREVENTING HARM

Like a clanging orchestra without musicianship, a good conductor, or effective governance

King's Birthday 2024

An open letter to New Zealand

**WorkSafe New Zealand – a decade of failure
Failures in relation to *Te Tiriti o Waitangi* obligations.
A Minister likely to accelerate the demise.**

NZ's dismal health and safety performance has had no material improvement in the first 10 years of WorkSafe New Zealand. Some trailing indicators show deterioration and key leading indicators point to likely acceleration in the downward spiral. Statistic measures of this dismal failure are:

- 750-900 people die annually in NZ from work-related diseases¹.
- The cost of the performance gap to Australia's performance is nearly \$1 billion annually².
- ACC's expenditure on work-related harm has doubled in 10 years³.
- WorkSafe's measure of disability life years lost places a value of \$2 billion on the burden of harm from work-related ill-health and injury⁴.

Principally to alert the new Minister, I rewrote a section from WorkSafe's 2022/23 annual report to provide what I believed was an objective assessment of the first 10 years of WorkSafe in the hope the Minister would respond quickly and decisively to the governance issues at WorkSafe. This 10-year report card was published on DGC's website.⁵

Minister Brooke van Velden

On TVNZ's Q+A show on 2 April, Minister Brooke van Velden was interviewed. Despite acknowledging that NZ's workplace health and safety performance is twice as bad as Australia's, her prepared messages focused on her strong desire to "cut the red tape" associated with health and safety compliance.

Rather than being focused on workplace safety, the Minister focused on removing costs for businesses to fit with her Wall Street-esque view of the world that "greed is good" and protections for workers must somehow have low costs. She is certainly an unusual square peg in this role. The Minister was adamant that, on the hustings, health and safety red tape was a recurring topic (and presumably the morbidity of workers was not). I assume her feedback was derived from the leafy suburbs of St Heliers where she held her street-corner meetings amongst her affluent supporters, rather than in the factories and workshops where the daily harm is palpable.

¹ [Work-related health estimates and burden of harm | WorkSafe.](#)

² The Business Leaders' Health, Safety and Wellbeing Forum's publication in August 2023

³ ACC data.

⁴ [Work-related health estimates and burden of harm | WorkSafe](#)

⁵ https://www.dgcompliance.co.nz/_files/ugd/b52dc9_820f338796b041cc949da2c077b5df1e.pdf

Not addressed anywhere by the Minister, or by Jack Tame, on Q+A was the highly inequitable outcomes for Māori and Pasifika people.

According to WorkSafe's 2022/23 annual report:

"Māori kaimahi experience a rate of serious injury at work that is on average 31% higher than non-Māori across all industries and sectors nationally. WorkSafe is committed to helping reduce the higher rates of work harm for Māori."

As a nation, we ought to be appalled at the first sentence and highly sceptical about the efficacy of whatever it is that constitutes WorkSafe's commitment to do better. Whose head will roll if this is not achieved? Which of the five deputy Chief Executives, whose roles were all preserved in the pre-Christmas 2023 restructuring of WorkSafe, will shoulder the blame?⁶

Before the Q+A programme, I had invited Minister van Velden to come with me to workplaces so that she could see first-hand the types of problems that I will now describe in successive articles. She declined. This was disappointing because, like most things in life, one must be out in the real world to understand the issues.

Had the Minister come with me to the industrial heartland of South Auckland, a short drive really from the *cappucini* available on the water's edge in St Heliers, she would have observed first-hand the types of harm to which workers are exposed in breach of the law. She could have inhaled the poisons that are their daily diet and noted the ethnic mix of the workforce working in industrial settings.

MBIE's data⁷ reveal that Māori workers are over-represented in the higher-risk manufacturing, and utilities and construction industries. Māori are over-represented in labouring jobs and they consistently earn less than the all workers' average. It is an obvious extrapolation that the huge difference in Māori workplace safety is a product of these factors – lower paid jobs in NZ are much more hazardous generally and Māori are, therefore, over-represented in roles that are in harm's way. The health gap is much greater than the pay gap.

WorkSafe's area of focus generally, and specifically to deliver on its **commitment** to better outcomes for Māori, has to be to make NZ workplaces safer. We know this is NOT HAPPENING, so we must delve into why.

NZ is third-world when it comes to worker safety

What I wanted the Minister to understand is that NZ is very third world in terms of its treatment of workers generally. New Zealand has evolved a haughty arrogance in relation to our collective naïve belief that we are a first-world nation protecting our environment and the nation's workers in the way that first-world nations ought to. We see footage of workers in third-world countries working in dreadful conditions and we recoil, however we rationalize this on the basis that a third-world country cannot afford to have health and safety regimes and the workers therefore must accept their hazardous work environments out of economic necessity.

⁶ There is at least one obvious candidate.

⁷ [Overview of Māori employment outcomes in Aotearoa New Zealand | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](https://www.mbie.govt.nz/employment-outcomes)

The difference in NZ is that we do have, and can afford to have, a robust health and safety regime – we learned through the tragedy of Pike River that it is criminal not to. NZ's similarity with the third-world, however, is that people are being forced through economic necessities to work in conditions that will surely harm their health. There are, therefore, too many workplaces that are being allowed to operate as if they were operating in the third-world. The businesses that do this are being allowed to, for reasons that WorkSafe should be asked to explain.

NZ's workplace health and safety data prove the third-world performance, but they do not truly reveal the magnitude of the harm. The image one needs to have in mind is the one I have seen frequently – workplaces with poisonous fumes in the air and hazardous chemicals in use, with people working hard in dangerous environments. The workers are aware of the poisonous air, but they know that their jobs will be at risk if complaints are made to a boss who is already doing what the Minister wants – he cuts every corner he thinks he can get away in relation to health and safety and will change his behaviour only if compelled to do so. The workers are being groomed to become part of the 750-900 fatalities annually from diseases originating in the workplace if they do not become part of the workplace death statistics prior to that. Their slow poisoning today will only be recorded in the statistics when they enter cancer wards sometime in their 50's to die their slow and painful deaths.

I am not being hyperbolic. The 750-900 deaths are derived from WorkSafe data. WorkSafe has also part-funded studies⁸ that establish the links between the poisons to which workers are exposed and the types of cancer that result. WorkSafe has this data, and yet still fails.

WorkSafe's poor execution is the problem

Putting the new Minister's speculative hypothesis to one side, I have not read any educated commentary that suggests that NZ's health and safety laws are not fit for purpose. After all, they are relatively new (introduced from 2015 on ironically by the National government) and were based upon the UK and Australian laws that have been part of those countries' success stories in this area. The NZ law is heavily geared to prevention; failure lies in its execution.

There are two major causes of this failed execution – the first is the poor attitudes, lack of knowledge and poor commitment by PCBUs throughout the supply chain as well as at workplaces. The second is the failed execution by WorkSafe. Each failure has a compounding effect on the other because poor enforcement by WorkSafe leads to poor compliance by PCBU's. The greater the non-compliance, the greater the challenge in terms of enforcement. Indeed, the first factor finds its way back to WorkSafe's basket of failures too because WorkSafe's legislated role includes educating PCBUs.

The signs of a struggling administrator, WorkSafe, show up in the types of enforcement actions it takes. It is not hard, of course, to be informed (because there is a legal obligation to notify WorkSafe) about a severed finger or a drowned schoolboy and to then find someone to prosecute for the failures. A business cutting corners is a different type of defendant from a Board of Trustees of a high school, even though both have a legal duty to do better. The prosecution of the latter has virtually no social, behavioural, or financial benefits whatsoever, but it does allow a failing WorkSafe to grab a headline for a day or two. That this occurs is suggestive there is a large problem at WorkSafe. After all, Novak Djokovic does not have to tell the world he is one of the greatest ever, his track record speaks for itself. So does WorkSafe's.

⁸ [New Zealand Carcinogens Survey 2021 | WorkSafe](#)

Leading indicators point to deterioration

There are currently two strong leading indicators for further deterioration in WorkSafe's performance. The first is the lack of skills generally in the Inspectorate. Lack of skills makes the Inspectorate both unqualified to, and reluctant to, perform one of the key roles that any enforcement agency or business must perform. The second is the recent rapid deterioration in the WorkSafe employee engagement measures. These are also factors which have an adverse compounding effect on the other – poor self-esteem and difficult work experiences will occur when one has been poorly trained. Demotivated people will seek ways to do less and will slowly disengage.

There is a third problem - the dreadfully low productivity metrics for the Inspectorate – and a fourth– the Inspectorate is still using equipment that was out-of-date in 2000.

This conglomeration of issues is a crisis which will take a long time to recover from.

There is a massive disconnect between WorkSafe's claims to be an **insights-driven regulator** and the types of skills, systems and performance that would inevitably be part of that. I noticed this phrase being used by WorkSafe during the tenure of Phil Parkes (CEO) and researched it. In WorkSafe's case, it means that information/ data sourced principally from the Inspectorate can be utilized to inform decisions that will include, for example, identification of recurring issues to facilitate management prioritization of industries and issues to address. If WorkSafe has poorly-trained people walking past major problems (as further articles will show) using no modern equipment (the Inspectorate is using notebooks and a pen) to capture the information digitally, then it is a very long way from being what it has long claimed. WorkSafe is the opposite of insights-driven.

A soon-to-published study by Chandra J will reveal that WorkSafe has published 978 times on quad bikes, 44% by her calculation of WorkSafe's publications. This study pinpoints the various ways in which WorkSafe misses the mark.

WorkSafe's "refreshed" strategic plan

Last week, WorkSafe released its Strategic Plan⁹. I am sure my son would have produced a plan of this quality or better during his time at university, such as its orientation to basic concepts, repetition of what is already in HSWA, and cheesy clip art. I sincerely hope that the WorkSafe Board got more than this out of its first seven months from Steve Haszard. What the plan lacks is:

- a recognition of WorkSafe's failures to date;
- what it has learned from the failures;
- what specific action steps will be taken to stop the slide;
- what the goals are; and
- when these goals will be achieved.

It is through recognizing failure that any organization committed to improvement can improve. WorkSafe, however, chose statistics that would suggest that it has made positive progress through taking credit for the 10 years that preceded its formation. Consider the following statement in the Strategic Plan in the context of a decade of failure since WorkSafe was established:

⁹ <https://www.worksafe.govt.nz/about-us/who-we-are/worksafe-strategy/>

“The rate of fatal injuries has reduced by more than 56% over the last 20 years, but improvement has slowed over the past decade.”

Twenty years takes us back to the dreadful period that preceded Pike River. Improvement has stalled, not slowed, in most areas and worsened in others.

Refreshing and regurgitating the reason WorkSafe exists is not a strategic plan. What, for example, are the health and safety outcomes that will be achieved for **Māori**? How will they be measured? How will they be achieved? By when? If WorkSafe recognizes that adverse outcomes for Māori are highly influenced by social, economic and workforce influences, then it will be forced to acknowledge that only through performing substantially better with the basic responsibilities it has will it achieve its “commitments” with regards to Māori. Not many rugby coaches believe that you can be a winning team without an effective scrum and an effective lineout – the basics are critical. WorkSafe needs the metaphorical equivalent of Razor Robertson, a “rugby player coach”, not coaches who fit the paradigm of “if you can’t play, coach” who sit behind desks in blue suede shoes. WorkSafe’s executive and mid-level manager appointments have been littered with poor players who can’t coach either.

WorkSafe has accumulated a list of failures and criticisms over the last four years including:

- The abysmal performance of WorkSafe in its administration of the adventure tourism operators in the lead-up to the Whakaari Island tragedy;¹⁰
- The assessment of Judge Evangelos Thomas that the “spectacular failures were contributed to by WorkSafe itself” (WorkSafe vs Whakaari defendants);
- The Sage Bush report;
- The Tim Smith report; and
- Business Leaders’ Health, Safety and Wellbeing Forum’s publication in August 2023.

WorkSafe is under regular supervision by MBIE presumably because of its poor performance.

The key player who must confront the long-term failure of the organization is the Minister - she is now six months in the role without any signs that she is concerned at the magnitude of the failure.

What’s next?

I shall publish articles which will examine in detail WorkSafe’s specific failures. Readers will see that the pattern of failures that existed in the lead-up to Pike River was repeated in the lead-up to the diabolical effort by WorkSafe ahead of the Whakaari explosion, and they are repeating currently. There is an eerie recurrence of a timid regulator unwilling to tackle large industries, large companies, and their unlawful conduct.

Someone, somewhere in the government or on the WorkSafe Board must dare to dream that NZ’s workplace health and safety performance can be what it ought to be in a first-world economy, that lives and health matter, and the legislative regime exists for this to occur. The dreamer must then act decisively to ensure that the governance structure and then the management team is capable of dealing with the massive challenges the organization has. We need more than a cookie-cutter refreshed plan and the same team doing the same things that have led to the decade of failure.

James Dunphy

¹⁰ Report into WorkSafe’s performance on Whakaari island by David Laurenson KC. [Whakaari White Island-WorkSafe report \(mbie.govt.nz\)](#) September 2021