

28 November 2023

Honourable Brooke van Velden
Minister – Workplace Relations and Safety
Wellington

Dear Brooke

WorkSafe New Zealand (WorkSafe)
An opportunity to turn the present spectacular failure into success for all stakeholders with near-term cost savings of \$1 billion

I congratulate you on your election success and for taking on an important Ministerial responsibility, especially in relation to WorkSafe, which is both a significant failure and a great opportunity.

New Zealand has had far too many catastrophic events. Each of these has contained valuable lessons about the high cost of failure in relation to workplace health and safety, however as a country, we have learned too little from them.

It is timely that you inherit WorkSafe within weeks of the scathing assessment it received from Judge Thomas, both during the Whakaari trial and in his judgment released earlier this month. His findings included those of “*spectacular failures contributed to by WorkSafe itself.*” On a broader level, there are many key stakeholders whose view is that **WorkSafe has been a spectacular failure generally.**

The WorkSafe New Zealand Act is now 10 years old, yet we observe today the same administrative failures that preceded the ICI Mt Wellington fire in 1984, the Pike River mine explosion in 2007 and the Whakaari Island eruption in 2019. These disasters sit atop a large pyramid of daily failures that are causing the 900 annual deaths from work-related causes and 5000-6000 hospitalisations from work-related health risks¹. My data support a conclusion that sad compliance failures are occurring daily in NZ workplaces where our people are being hurt, killed, and slowly poisoned. These failures are sad because they are so avoidable and because they have such high people, social and economic costs. I am not exaggerating the scale of failure - WorkSafe’s own data confirm it.

The Business Leaders’ Health, Safety and Wellbeing Forum’s publication in August 2023: “State of a Thriving Nation” assessed the economic cost of lost lives, lost earnings, serious injury and health costs from workplace harm at \$4.4 billion annually. It added:

“If New Zealand could improve its performance to match that of Australia, we would reduce costs to New Zealand by nearly \$1 billion per annum. The size of the prize is large in human, social and economic terms.”

The Business Leaders’ publication provides you with:

- the facts to benchmark the failures by WorkSafe in its first 10 years;
- an economic framework to underline the necessity for effective administration of workplace conduct; and
- A realistic goal – a \$1 billion saving - within the first term of your government.

¹ These are WorkSafe data.

My view from the trenches of hazardous substances compliance is that the \$4.4 billion cost estimate may be significantly higher, especially due to the long-term adverse health effects of workers ingesting poisons at work every day. People exposed to dangerous vapours learn to tolerate them after a little while, and the prospect of their chronic diseases and premature deaths become an awfully high statistical probability.

I have published on our website² an explanation of how three dangerously-interactive factors are creating a cocktail of failure in relation to hazardous substances at NZ workplaces. The factors are PCBU ignorance of their obligations, a poorly-trained and ineffective WorkSafe inspectorate, and skill-deficient³ compliance certifiers. WorkSafe is the common denominator because it is the only entity with the powers to positively change all three factors.

There are enough independent reviews to remove any doubt that WorkSafe is highly culpable for its failures. They include:

- The HASANZ 2019 study into health and safety professional groups
- David Laurenson's independent review of WorkSafe's performance leading up to Whakaari island
- Tim Smith's independent review into aspects of the hazardous substances' regime
- The 2022 SageBush report into WorkSafe.

All tell a sad story of WorkSafe failure. All were met with promises to do better, none of which have occurred to avert the slide of the organisation.

I have not seen any researched view that argues that New Zealand's health and safety legislation is not robust and well suited to achieve its objectives, indeed I believe the legislation is appropriate and provides a powerful framework. If the legislative regime is suited to achieve its purpose, failure must be attributed to the administration of it, especially now that the Health and Safety at Work Act 2015 is eight years old. Despite the legislation being geared to prevention of harm, the data referenced above prove the systemic failure of both employers and WorkSafe. WorkSafe has the power to compel improvements by employers but is failing to do so.

In my experience, WorkSafe continues to ascribe to the dangerous presumptions that contributed to the inaction by the Department of Labour after it diagnosed issues at the Pike River Mine. It was the theory that the corporate entity was "reputable" and could, therefore, be trusted to address the deficiencies; of course, we know this did not happen. It is a dangerous mindset for any administrator, yet I have seen considerable evidence of WorkSafe pandering to major corporates, including those whose standards I have assessed in the lowest decile of companies in terms of their compliance with their legal duties in relation to hazardous substances. I can brief you privately on examples that will alarm you greatly due to both their prestigious names and their despicable failures. WorkSafe has appeared willing to turn a blind eye to blatant non-compliance and appears to have no organised way of adequately following up when major corporates' compliance certificates expire. It clearly lacks basic organisational skills, in addition to its deficiencies in skills and execution, or is following the full script of dangerous presumptions. The very people whom the legislation is designed to protect are being badly let down.

² [WorkSafe Issues | DGC Website \(dgcompliance.co.nz\)](https://www.dgcompliance.co.nz/worksafe-issues). The perpetual circle of failure that WorkSafe is perpetuating.

³ This description came from the former WorkSafe CEO in 2022 before a parliamentary select committee.

WorkSafe has expressly adopted other practices that hinder its performance. None of its management team ventures into workplaces to see issues first-hand, it chooses to attempt to audit physical inspections by reviewing only documentary evidence⁴, and none of its leadership team has a resume which suggests s/he is an expert in what happens on-site in matters which impact the very reason that WorkSafe exists. The very basic ingredients of a formula to achieve the legislative objectives of HSWA are absent, yet they are so easy to instil into the mix.

Examples of poor performance by WorkSafe's inspectorate and its office staff abound. The group that audits compliance certifiers has many examples of taking more than 50 times as long to audit a certifier as certainly our team can achieve. This extraordinary inefficiency and inefficacy are the hallmarks of the organisation.

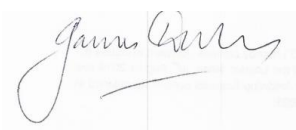
You are not confronted with any assets that require massive investment and you already have \$100 million of cost that can be better spent. Upskilling, redirecting and potentially capitalising upon the private sector's efficiencies can turn WorkSafe's serial underperformance around. DGC stands as proof that expertise in the sector can be developed and applied effectively daily, comfortably within the three-year term of your first government.

I have no doubt that both you will need to recognise that the Board has presided over WorkSafe's spectacular failures. Change is needed with a new and smaller Board to oversee a radically different type of organisation that must emerge in coming years from the ashes of WorkSafe's first 10 years.

With a new Board and a clear set of specific Ministerial objectives to supplement those defined in HSWA, you can expect to release the \$1 billion of economic benefits within your first Ministerial term. It is an exciting prospect for all stakeholders.

You have my sincerest wishes for success in your role and I offer you my full support in whatever capacity it might be helpful.

Sincerely



James Dunphy
Managing Director
Dangerous Goods Compliance Limited

⁴ These facts are all confirmed via WorkSafe's OIA responses when I have probed in relation to these issues. I have no doubt that the least effective organisations are those that deny their leaders time in the field. One cannot run anything effectively for long when one spends most of the time inside a comfortable office in a dark Wellington building.

