

17 November 2023

Mr Steve Haszard  
Chief Executive  
WorkSafe New Zealand

Dear Mr Haszard

**Poor performance by compliance certifiers  
Failure by WorkSafe to adequately perform its functions under Part 6**

**1. The essence of the issues causing massive compliance failures**

The compliance regime in relation to hazardous substances has complexities in places. The regime became significantly more complex in 2017. I doubt that many of the certifiers, who obtained their authorisations prior to the 2017 regulations, properly understand the rules today, yet they have pivotal roles in the compliance regime by virtue of the reliance placed on them by most PCBUs and their roles as the exclusive issuers of required compliance certificates. There are, therefore, large knowledge and performance issues that are highly problematic.

HASANZ's study published in 2019 painted a dreadful picture of compliance certifiers. In March 2022, WorkSafe's former CEO publicly acknowledged their weaknesses. Thus, between 2019-2022 these weaknesses remained unaddressed. Whatever weaknesses there are at WorkSafe, the onus is squarely on certifiers to understand the rules and perform competently. Ignorance of rules is never an excuse – Judge Thomas has made that very clear. WorkSafe knows about the deficiencies, yet has been unwilling to tackle the certifiers' profound deficiencies head on, other than highly selectively<sup>1</sup>.

From the start of 2023, I started compiling my own database of certifiers' failures to quantify the extent of the problems. My data are sourced principally from audits DGC's certifiers conducted when following other external certifiers. I shared the "first 50 failures" with WorkSafe in the middle of this year, but this yielded no apparent reaction aside from a rather curt acknowledgement of receipt. Our list kept growing and that is now presented on pages 2 and 3 of this letter as the "first 100 certifier failures." We find:

- 100% failure rates by the certifiers in the list. None of our inspections, which followed a previous certifier, has produced a full compliance outcome. That is staggering.
- Multiple issues in relation to eight certifiers. We can dismiss, therefore, the notion that we have come across aberrations.

I have no doubt that the data provide a sound statistical basis for concluding that there are major problems – the empirical data tie into the HASANZ conclusions and the former CEO's public recognition of the euphemistically-described "skill deficiencies." I have no doubt that PCBUs rely heavily on what their compliance certifiers tell them and when they receive a certificate, they believe they are compliant. This sets up the cycle of recurring failure that I have published on our website. This is a serious problem.

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<sup>1</sup> The persecution of a handful of compliance certifiers while others slide by as though coated in Teflon is noted but not developed in specific detail in this letter. It is obvious though when we consider, for example, Certifier 39 – as discussed later.

WorkSafe's data on the outcomes from certifier inspections (especially pass/ fail rates evidenced by notices of refusal to issue certificates) suggest a very different picture of performance; in fact, other certifiers' extraordinarily high pass rates (99-100%) simply confirm that the same old certifiers are doing the same old things with the same old results. This is also leading to outcomes in the market which result in the least able certifiers continuing to be allowed to keep printing certificates and "bending the rules for clients"<sup>2</sup> rather than move to the most competent certifiers – clients are addicted to certificates, and this is their principal focus until they get a massive wake-up call about compliance.

WorkSafe is the only entity with the policing functions in relation to the performance of certifiers. The powers are in Part 6 of the Regulations. Were WorkSafe performing this role well, we would not have the alarming data presented in this letter. I quote in this letter WorkSafe's own disclosures regarding its choices of the least effective techniques – missing the elephant in the room – in favour of the Regulatory Assurance Group's paralysing fascination with procedural minutiae which are of little consequence. Poor techniques and extremely few audits have resulted in WorkSafe creating a glide path for the inept certifiers' survival.

In many cases, our inspections resulted in notifications of refusal to issue a compliance certificate. Thus, WorkSafe itself has most of this information already, but has it bothered to interrogate the information and ask – having regard to the magnitude of the non-compliance, what does this tell us about the prior certifier? Tellingly, there are examples where WorkSafe's inspectorate has complained about the DGC certifier but has taken no action against the prior certifiers even after receiving the specific, lengthy list of non-compliances by the prior certifiers.

In relation to complaints the "top 100 certifier failures", I have followed the process that WorkSafe demands I follow<sup>3</sup> for complaints. The difference between this list below and the list submitted via the Complaints line is that the client names have been added. I have omitted the certifiers' names because an objective, reasonable and fair administrator would not change its approach based upon the identity of the certifier(s).

There are many examples in this list where you will be able to establish for yourselves the third side of the cycle of recurring failure. The first two are PCBU ignorance and certifiers' failures. The third is the failure by WorkSafe's inspectorate – these failures reflect a lack of basic understanding from the most junior to the most senior WorkSafe's people, with dangerously-misleading guidance sometimes given to the PCBUs. In other examples, you will discover that WorkSafe has only rarely, if ever, inspected some dangerous locations, while at others the old biases exhibited by the Department of Labour – "Pike River Mining is a reputable corporate" – appears to have improperly influenced the response from the Inspectorate.

My colleagues can take you through each of the 100 failures in considerable detail – most have our standard 40 plus page reports which document the failures. The question is whether you are brave enough to listen as a step towards addressing these significant weaknesses in WorkSafe's administration.

There is a difference between the plain font (first 50 failures) and the italicised font (second 50 failures). The aggregation by certifier (named in the hidden column) enables a quick assessment of where there is systemic failure. Remember as well that, in relation to just about every one of these certifiers, their certificate pass rates are close to 100%.

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<sup>2</sup> This phrase came from more than one client that we attempting to solicit in Christchurch. It sums up that the most decisive competitive factor in compliance certification is one which is misaligned with the objectives of HSWA.

<sup>3</sup> WorkSafe will be aware that it imposes the obligation to use the complaints form on its website selectively also. There is a specific example of WorkSafe mis-characterising one matter as a "complaint" when it was not and then leaping into investigation mode when the person who sent the email was not required to follow processes.

**Table 1: List of the First 100 Certifiers' Failures**

DGC Client Number	Full insp (F) of Other?		Certified for	Assessment
<b>Sev certifiers</b>	<b>/other</b>			
38095	F	e	LPG	FAIL
37599	F	ij	LPG	FAIL
37384	F	ht	LPG	FAIL
<b>Certifier A</b>				
25319	F	v	TW	FAIL
27416	F	v	TW	FAIL
<b>Certifier B</b>				
23001	F	E	LPG & Class 3	FAIL
18803	F	E	Class 5 location	FAIL
18804	F	a	Class 5 stationary	FAIL
<b>Certifier C</b>				
37872	Other	h	Class 3	FAIL
38145	Other	h	LPG & Class2, 3, 5, 6 & 8	FAIL
36050	F	h	LPG, class 3 and stat cont	FAIL
<b>Certifier D</b>				
9801	F	t	LPG	FAIL
9802	F	t	LPG	FAIL
9803	F	t	LPG	FAIL
9805	F	t	LPG	FAIL
38150	F	t	LPG	FAIL
9804	F	t	LPG	FAIL
37744	F	t	LPG	FAIL
9812	F	t	LPG	FAIL
38265	F	t	LPG & Class 3	FAIL
38356	F	t	LPG & Class 3	FAIL
38356	F	/	Class 6&8	FAIL
N/A	Other	t	LPG	FAIL
22904	F	t	LPG & Class 3 & 5	FAIL
22904	F	t	SCS/Class 8.2B/Sulphuric	FAIL
22904	F	t	LCC/Class 8.2B	FAIL
22904	F	t	SCS/Class 8.2B/Sodium Hydroxide	FAIL
22904	F	t	SCS/Class 8.2B/Nitric	FAIL
22903	F	t	LPG & Class 3 & 6	FAIL
22903	F	t	SCS	FAIL
22903	F	t	SCS	FAIL
22903	F	t	SCS	FAIL
22903	F	t	SCS	FAIL
22903	F	t	SCS	FAIL
22903	F	t	SCS	FAIL
6600	F	t	SCS	FAIL
38356	F	/	Class 6&8	FAIL
38480	F	/	LPG	FAIL
36512	F	/	Class 5, 6&8	FAIL
34585	F	/	Class 3's and 5's	FAIL
9818	F	/	LPG	FAIL
9819	F	t	LPG	FAIL

<b>Certifier E</b>			
N/A	Other	LPG	FAIL
23052	F	Class 3	FAIL
9808	F	LPG	FAIL
37688	Haug	diesel stationary certs	FAIL
<b>Certifier F</b>			
30156	F	Stationary containers	FAIL
37817	F	LPG	FAIL
38351	F	Class 3	FAIL
	Other	LPG	FAIL
	Other	Class 1	FAIL
	Other	Class 1	FAIL
<b>Certifier G</b>			
37798	F	LPG & Class 3	FAIL
23031	F	Class 3	FAIL
23048	F	Class 3	FAIL
23050	F	Class 3	FAIL
38565	F	Class 3	FAIL
38554	F	Class 2 & 3	FAIL
<b>Certifier H</b>			
38357	F	LPG, class 2 & 3	FAIL
<b>Certifier I</b>			
29020	Other	Class 6&8	FAIL
29026	Other	Class 6&8	FAIL
29037	Other	Class 5, 6 & 8	FAIL
29038	Other	Class 8	FAIL
29052	Other	Class 4,5,6&8	FAIL
29066	F	Class 6&8	FAIL
29073	F	Class 6&8	FAIL
29070	Other	Class 6&8	FAIL
29040	F	LPG	FAIL
29006	F	LPG & Class 5, 6 & 8	FAIL
29008	F	Class 5 & 6	FAIL
29001	F	Class 2, 4, 6 & 8	FAIL
29027	F	Class 8	FAIL
29042	F	Class 4,5,6&8	FAIL
29046	F	Class 8	FAIL
29059	F	Class 8	FAIL
29023	F	LPG & Class 5 & 8	FAIL
29061	F	Class 6	FAIL
29036	F	Class 6&8	FAIL
29004	F	Class 2	FAIL
29010	F	Class 3, 6 & 8	FAIL
29012	F	Class 3, 6 & 8	FAIL
29014	F	Class 3, 6 & 8	FAIL
29015	F	Class 3, 6 & 8	FAIL
29016	F	Class 2, 5, 6 & 8	FAIL
29017	F	Class 2, 6 & 8	FAIL
29018	F	Class 2, 6 & 8	FAIL
29019	F	Class 2, 3, 6 & 8	FAIL
29020	F	Class 6 & 8	FAIL
29021	F	Class 2, 3, 6 & 8	FAIL
29022	F	Class 5, 6 & 8	FAIL
29023	F	Class 3, 5, 6 & 8	FAIL
29024	F	Class 6 & 8	FAIL
29026	F	Class 6 & 8	FAIL
29028	F	Class 2, 3, 6 & 8	FAIL
29030	F	Class 5, 6 & 8	FAIL
29031	F	Class 2, 6 & 8	FAIL
29032	F	Class 3, 6 & 8	FAIL
29035	F	Class 3, 5, 6 & 8	FAIL
29037	F	Class 2, 3, 6 & 8	FAIL
29038	F	Class 6 & 8	FAIL
<b>Certifier J</b>			
38613	F	Class 3	FAIL
38616	F	Class 3	FAIL
38616	F	Stationary Container	FAIL

## 2. Background

During this year, WorkSafe sought my views on its Audit Policy. There are issues with that policy, however there are much larger issues in relation to how WorkSafe performs its tasks under Part 6 of the Regulations generally.

I say our data are conclusive that WorkSafe has failed to achieve the objectives of Part 6; in essence, the powers associated with authorisations, audits, investigations and reauthorisations are designed to ensure that certifiers are competent and performing their functions in accordance with the rules. There is doubtless contributory negligence on the part of the compliance certifiers, however, I have little doubt that had WorkSafe performed its functions adequately, the extraordinarily high levels of incompetence among certifiers would not exist.

More troublingly, there is evidence of huge disparities in the way that different certifiers have been treated that it is reasonable to call into question the bona fides of those in charge of exercising the powers in Part 6.

I have observed WorkSafe in its various Part 6 modes, ranging from:

- audits,
- triaging matters prior to any investigation,
- investigations, and
- disciplinary proceedings.

Your issues span:

- a lack of technical skills institutionally at WorkSafe,
- a lack of technical skills in positions where such skills are critical – in this context in the RA Group,
- deliberate decisions to avoid the most important investigative tool – to inspect the site, replicating the exact roles that a compliance certifier must perform,
- conducting audits with small samples (in some cases being fewer than one in every 600 certificates issued) which means you will be looking for the metaphorical murder weapons in a whole city, rather than in the pantry,
- making decisions on the basis of safety issues, especially by persons unqualified to make such assessments, and, in doing so, avoiding the non-compliance by the certifier to matters that he is obliged to verify,
- excessively pedantic audits that are supposed to take eight hours (according to the WorkSafe's policy) but which have, in fact, taken more than 100 hours of WorkSafe's time by my estimation and 60 hours of our time,
- a dysfunctional and under-skilled WorkSafe inspectorate which ought to be an important source of issues related to certifiers but, in all likelihood is not, and
- an audit policy that purports to deny the requirements in the Regulations in relation to what a certifier must verify.

### 3. The Most Obvious Investigative Technique is not used. Why not?

It ought to be obvious that the accuracy of any physical inspection is very unlikely to be ascertained by a review of records only; yet WorkSafe's auditors endeavour to audit/ investigate certifiers' inspections and decisions, which are primarily made during a physical inspection, without visiting the locations in question. In fact, WorkSafe's OIA response<sup>4</sup> acknowledges exactly this and states that the "objective of an audit is to review the documentation." Audits conducted in this manner are destined to miss many critical aspects. You will never find in records, for example, those matters that the certifier has deliberately turned a blind eye to. Some certifiers may not be particularly skilled, but they are not stupid and are not going to leave a trail of their own duplicity.

If the complaint is that the certifier failed to properly assess physical aspects of the location (hazardous area not maintained, sources of ignition issues, lack of fire-rated protection, defective AS 1940 cabinets), how exactly will an audit of the certifier's documentation sensibly identify the failure? It won't. Take a tank wagon, for example – WorkSafe's processes will never ever get to the bottom of prolific non-compliance because the certifier's audit is principally physical. This is a particularly powerful example to consider because WorkSafe was apparently prepared to note (in fact, I highlighted it for you) that only one certifier (DGC's) made any notifications of refusal to certify tank wagons in 2022<sup>5</sup>. This example shows that WorkSafe's enforcement activities are so ineffective that certifiers are prepared to run the gauntlet of unachievable<sup>6</sup> 100% pass rates for their clients.

Whether you abide by the theory that pictures and reviews won't prove whether a chef is fit for a Michelin restaurant or only for part-time work at the Green Parrot, or you worry about Donald Rumsfeld's *known unknowns* and his *unknown unknowns*, the only way to get to the heart of competence is to conduct a physical inspection of what the certifier missed, or likely concealed in his report. Take the complaint in relation to Certifier G (DGC client #38565) from the List – all the major non-compliance is in the building, not at the type B storage location<sup>7</sup>. I expect G's report will show none of these non-compliances, otherwise he would have been precluded by reg 10.34(1)(j) from issuing a certificate.

### 4. Complaints are valuable, but not appropriately investigated by WorkSafe

#### ***The Importance of Complaints – They remove the needle in the haystack problem that exists with WorkSafe's audit approach***

If you consider three factors:

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<sup>4</sup> The OIA questions have elicited these responses from WorkSafe:

"The RA team is not required to visit sites when conducting audits or investigations into complaints. **WorkSafe's operational policy regarding the conduct of audits is that they are paper based**, as our Advisors are conducting the review of documentation provided by the compliance certifier.

I can confirm that no members of the RA team have conducted a location visit for the purposes of conducting an audit similar to that of a Certifier Audit, regarding a complaint about a certificate issued by a compliance certifier."

<sup>5</sup> DGC's certifier had a 15% tank wagon failure rate (outcomes/ inspections) whereas every other certifier had a 0% failure rate.

<sup>6</sup> Unachievable because we know from being the largest tank wagon certifiers in the market the multitude of ways that non-compliance occurs.

<sup>7</sup> The site plan was a disgrace and the worker training records inadequate as well.

- WorkSafe’s paper audits generally involve approximately five files only which could be fewer than one audited file per 500 certificates, or less than 0.2%;
- WorkSafe does not go to the locations in question to inform its audits; and
- Complaints most frequently originate from other certifiers who have been to the locations where the certificates were issued and will identify specific alleged failures,

an objective view is that complaints provide an invaluable opportunity to gain insights into the ability and conduct of the prior certifier. When the complaints are aggregated, the systemic failures of the certifier become evident and the argument that the one file was a unique error can be dismissed. Hence, for example, the high value attached to the list contained in this letter if WorkSafe is intent upon performing its functions in Part 6.

For example, we have made complaints with aggregated numbers of failures of more than 10 for some certifiers and the picture of their incompetence is told through each of our reports and their poor certifications. We have produced, in relation to some of them, more than five times as many complaints as files audited by WorkSafe once every four or five years. Yet, my complaints have generally been met with a thoroughly lackadaisical response from WorkSafe. Why this is so is unclear.

It has been common practice for WorkSafe to do one of four things in relation to complaints:

- the complaint goes through (at least when it suits WorkSafe) a “triage process” which involves the exercise of individual judgments by people with limited skills;
- most bizarrely, at times, a decision is made to not investigate the complaint at all because the location has a compliance certificate;
- the matters dealt with in the complaint are deemed to not constitute a material safety issue; and
- the complaint is diverted to an audit.

***WorkSafe’s data are that almost no complaint in the three years ended September 2022 made in relation to the most prolific certifiers was dealt with as a complaint.*** Given what we are now convinced about in relation to the lack of certifiers’ demonstrated competence and ability, WorkSafe has denied itself the opportunity to discover what we have discovered in relation to 100 inspections (remembering that the failure rate is 100%).

##### **5. The Curious Case of the Whanganui Certifier (the Cat with Nine Lives) Highlights Several Problems**

The investigation into the ODL Whanganui incident in 2022 noted that the certifier who had incorrectly certified the location for many years consecutively had been following rules that had been repealed with the introduction of the 2017 Regulations. He either didn’t know the current rules or had chosen not to follow them. Whatever his explanation was, there is without doubt evidence of a lack of ability or poor conduct on his part. Had the certifier followed the rules, he would have refused certification, notified WorkSafe and then left WorkSafe to perform its enforcement roles. Because he failed, and WorkSafe didn’t conduct any independent investigation itself, we have a prime example of events unfolding which the Regulations are designed to prevent. If the certifier did not know the rules in relation to class 1’s, did WorkSafe query his knowledge of the rules for the other classes that he certifies?



We do know from the public record that **approximately 12 months after the Whanganui incident, WorkSafe renewed the certifier's authorisations**, albeit that he apparently did not seek to renew some of his class 1 authorisations. I note as well the other opportunities that WorkSafe passed up to investigate the same certifier's deficiencies:

- my 2020 complaint relating to "11.33" was siphoned off into an audit which revealed some material weaknesses in relation to his audit of the shop in question;
- my further complaints about hundreds of flawed retail certifications went nowhere evidently because WorkSafe was unable to decipher how he had failed to meet the requirements for the locations he had got wrong; and
- there is no evidence that WorkSafe took any initiative to investigate other class 1 locations certified by him once the issues at Whanganui came to light. There are, in fact, some other colossal failures.

Notwithstanding what can be aptly described as ignorance on the part of the Whanganui certifier in relation to what specific class 1 requirements were, and notwithstanding also the apparent failures in relation to his certification of retail shops, WorkSafe was prepared to positively adopt the theory that there was nothing to worry about in relation to the ability and conduct he displayed in relation to the other assets and classes he had certified. I find that extraordinary and query why an administrator following the objectives of HSWA would behave in such a manner. Below are the findings from WorkSafe's investigation into the Whanganui incident.

**5834899**

- 6.10. A construction compliance certificate had been issued for magazine #2. This is reproduced at Appendix 7 – Magazine #2 Construction Certificate based on the magazine's compliance with HSNOCOP 55.
- 6.11. When the HS Regulations were promulgated in 2017 HSNOCOP 55 was no longer allowed to be used to for the compliance of magazines as all HSNOCOP's were removed from their authoritative positions through the revocation of the Regulations that empowered them.
- 6.12. WorkSafe has not found any evidence, and the PCBU has not supplied any evidence that suggests that the magazine was compliant with the requirements of the HS Regulations despite compliance certificates being issued for construction compliance by the compliance certifier from 2018 onwards citing HSNOCOP 55 as the means of compliance.
- 6.13. This magazine should have been considered by the compliance certifier for its compliance with Regulations 9.19 and 9.20 of the HS Regulations and in turn, AS 2187.1 – 1998 Explosives - Storage, transport and use, before the compliance certifier issued the construction certificate. The compliance certifier could have taken into account Clause 6 of Schedule 1 of the HS Regulations if needed.
- 6.14. A design compliance certificate has not been found for this magazine.

These observations align with my own experience in 2020 at New DGC (differentiating the new company from the practices of its predecessor in the same business). The lack of comprehensive knowledge of the regulatory requirements and adequate inspection templates stood out as a major reason for the prior DGC directors' very high certification rates in 2018 and 2019. Bringing inspection standards into line with the regulatory requirements led to the inevitable high failure rates that we experienced in 2020.



Moving from the Dark Ages to the Age of Enlightenment resulted in 85% failure rates as we accurately assessed PCBUs compliance with the matters that certifiers are obliged to check.

WorkSafe's data on Notifications reveal that no other certification firm has ever had the 2020 failure rates and Notification rates that DGC had in 2020. Either you must be confident that DGC's former director certifiers were the most recalcitrant in the industry, or WorkSafe has largely turned a blind eye to the systemic failures by the other certifiers. Perhaps both?

In any event, my data suggest that the "Whanganui certifier" is not an isolated instance. He is likely highly representative of the older cohort of certifiers who never developed the requisite skills in the 2017 Regulations and have continued to operate as if the new rules don't exist. This seems to be what the former CEO of WorkSafe was meaning when he spoke to the parliamentary select committee in March 2022.

Certifiers operate in the private sector, just like dentists, lawyers, and bricklayers. They are entirely personally responsible for their own skills and education. It is not WorkSafe's role to train them or provide courses to enable them to acquire the necessary skills, but it is WorkSafe's role, via Part 6, to hold them to account. No industry body or disciplinary body would tolerate a family lawyer who caused 25 divorcees to not get their lawful share of matrimonial property on account of what their common lawyer did not know; but when it comes to WorkSafe, such dreadful results are out there and go unpunished.

## **6. The Bizarre Case of "Certifier 39"**

WorkSafe's register of compliance certifiers shows that this certifier's reauthorisations have been "pending" since August 2020 – that is now 39 months, or more than 80% of the average renewal period.

He, and the certifier whom he employs, account for 31 entries in our "first 100 certifier failures."

There is surely something that is not right in this picture and all roads lead to WorkSafe.

## **7. Comparing How Other Complaints have been dealt with**

WorkSafe's pattern of not turning complaints into investigations, at least when it comes to some protected certifiers such as the Whanganui certifier, has been broken by WorkSafe when it comes to certifiers that it obviously wishes to expunge from the regime. There are many examples of:

- threats by your investigators to coerce co-operation;
- mis-characterisation of external enquiries as complaints, presumably to create the authorisation to pursue them by harassing the certifiers;
- the issuance of section 168 notices to compel production of documents (unlawfully as has been pointed out to WorkSafe and I note here the decision of Judge Thomas in relation to the s 168 notices issued to WML);
- significant expansion of the scope of the investigation, accompanied by the deceptive characterisation of internal concerns as external complaints; and
- attempting to coerce certifier participation in your processes when there has been a compelling medical reason for the process to be delayed.

## 8. Site Plans – an example of prolonged tolerance of certifier failure by WorkSafe

On 20 November 2023, WorkSafe hosted the first of its 2023 workshops on this topic. I mentioned at the end of that workshop that 'DGC is very aligned with what WorkSafe explained during that session.' The dichotomy between what WorkSafe and the law expects and what certifiers are allowed to get away with arises in this manner:

- The Regulations are prescriptive in relation to the requirements for site plans - a fact.
- The Regulations contain guidance in relation to the degrees of precision required and not required.
- WorkSafe described the situation in relation to compliance as a "perennial problem." That is obvious to us as well.

Thus, six years after the requirements were defined in the Regulations, WorkSafe continues to tolerate widespread certifier failure. One of the most surprising comments by a cantankerous certifier was that he was 'too busy to be concerned with the requirements.' I got the impression that he defines his own view of what the Regulations ought to require. For some strange reason, WorkSafe tolerates this type of nonsense from cantankerous, recalcitrant certifiers and the consequence is non-compliance by PCBUs.

We shall wait with interest to see whether WorkSafe makes good on the statement today that there is now a "line in the sand" for certifiers in relation to site plans. There ought to have been one from 2019 at the latest.

## 9. Compliance with the 2021 Performance Standards

A further issue is whether a certifier who solely uses an inspection template and takes no photographs complies with the PS. The easy answer to this is No because taking photographs of signage, at least, is mandatory.

The standard defined in the PS, which existed in a draft format for more than two years, for most of the evidence a certifier is required to collate, is that it must "verify" the particular legal requirements the PCBUs must meet.

An inspection template that is some form of checklist cannot meet this required standard of "verification" without substantial additional detail being collated and documented. Photographs, especially when they are annotated with other information such as distances, are one way of verifying controls have been met. Take, for example, the verification that the 1 metre up, and 3 metres around, requirements for the hazardous area for an AS 1940 cabinet - decent photographs can prove compliance. A checklist without a lot of details, simply cannot.

There is considerable variance in relation to how certifiers attempt to meet the requirements of the performance standards. Few of them truly do. This is, therefore, another example of how WorkSafe fails to confront the failures by some certifiers to meet the standards defined by law.

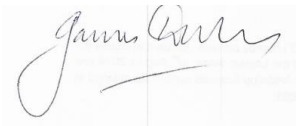
## 10. Construct of Judge Thomas

The decision of Judge Thomas in *Whakaari*, supplemented by the findings of David Laurenson KC to which Judge Thomas referred, shows just how obvious the failures were by both WorkSafe and WML, at a minimum. The video footage on Netflix's *Volcano* shows other obvious failures. Judge Thomas had no hesitation in describing as "worthless" the audits done in connection with WIT's attempts to comply with its legal obligations. One wonders now, of course, why anyone would have thought that worthless audits could possibly have been adequate. What is obviously deficient at the time of its preparation will have its failures apparent to all when there is an incident. HSWA is, after all, principally designed around prevention. Competent administration requires the willingness to deal proactively with deficiencies.

This letter has provided you with evidence of two types of worthless audits – those done by certifiers and those done by WorkSafe when attempting to investigate the worthless audits of the certifiers. I don't doubt that when (and not if) these worthless audits contribute to the next calamity, the court and the country will once again wonder why those responsible for preventing such lunacy allowed the warnings to go unheeded.

I hope you find these insights valuable as you endeavour to understand why the industry deficiencies identified by HASANZ still remain largely unaddressed except by a small number of certification companies such as ours.

Sincerely



James Dunphy  
Director

