

OCTOBER 2021

**INDEPENDENT REVIEW  
NOTIFICATION OF REFUSAL TO ISSUE A  
COMPLIANCE CERTIFICATE**

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## **Memorandum**

To: Darren Handforth, Head of High Hazards, Energy and Public Safety, WorkSafe

Date: 7 October 2021

### **INDEPENDENT REVIEW – NOTIFICATION OF REFUSAL TO ISSUE A COMPLIANCE CERTIFICATE**

#### **Background and introduction**

1. Further to Terms of Reference dated 29 July 2021 (**ToR**), as set out at **Annexure 1**, I am asked to provide an independent view on certain allegations by 9(2)(a) [REDACTED]
2. The relevant allegations are to the effect that:
  - (a) compliance certifiers (**Certifiers**) are deliberately not notifying WorkSafe of their refusals (**Refusals**) to issue compliance certificates (**Certificates**) under the Health and Safety at Work (Hazardous Substances) Regulations 2017 (**Regulations**), in breach of regulation 6.23(2)(b); and/or
  - (b) Certifiers are issuing Certificates for sites when they should not be; and
  - (c) WorkSafe has been aware of these failings and has not done anything about that.
3. The express objectives of my review, as set out at clause 2.1 of the ToR, are to:
  - (a) provide WorkSafe with an independent and practical perspective on:
    - (i) Certifiers' performance in relation to their obligations to notify refusals to issue Certificates; and
    - (ii) WorkSafe's regulatory performance in relation to notifications of Refusals; and
  - (b) identify any learnings or opportunities that exist for improvement.
4. As set out at clause 3.1 of the ToR, there are three interrelated deliverables that form the review. These are:
  - (a) A factual narrative – This sets out a timeline, data analysis and narrative of notifications of Refusals from the calendar years from 2017 to 2020. This is set out at **Annexure 3**.
  - (b) Report of Certifier performance – Based on both the factual narrative, and extensive interviews with WorkSafe staff, Certifiers and related professional bodies, this sets out my reflections upon Certifier performance in relation to the legal obligations imposed on them by regulation 6.23 and the discretion available under regulation 6.24 to issue Conditional Compliance Certificates (**Conditional Certificates**).
  - (c) Report of WorkSafe regulatory performance – Again based on both the factual narrative and extensive interviews, this sets out my reflections upon WorkSafe's performance in relation to its regulatory oversight of compliance with regulation 6.23 – including whether notifications of Refusals are followed up, non-compliances confirmed and, if so, decisions made about next steps.
5. In setting out my Report, I follow the headings under the heading "Scope" at clause 4.1 of the ToR. Also, further to my directions at clause 4.2 of the ToR, I do not:
  - (a) Make findings about or determine the appropriateness of individual notifications for refusal to issue a Certificate.

- (b) Consider the correctness or quality of any legal advice provided.
  - (c) Make findings or recommendations that are specific to individual parties (including individual WorkSafe staff members), other than WorkSafe or particular WorkSafe teams.
  - (d) Consider any transfer of functions to or from WorkSafe.
  - (e) Make recommendations concerning WorkSafe's organisational structure.
  - (f) Consider whether amendments should be made to existing legislation.
  - (g) Make findings or recommendations about the competency and capability of WorkSafe staff or the training provided to staff.
  - (h) Make findings or recommendations about policy or policy matters.
6. In making my findings and recommendations I express my thanks to all of those who gave up their time to share their helpful thoughts and insights with me in interviews. A list of those interviewed is at **Annexure 4**. I am also grateful to Rachel Carne of WorkSafe for providing me with administrative assistance in carrying out this review.
7. While a number of very different thoughts and views were expressed, all those I interviewed were well aware of the importance of the role that each of them plays in what is a vital regulatory system. Each person that I spoke to clearly saw potential for that system to be improved and gave me their sincere views on how to do that. Despite the differing approaches that a number of both WorkSafe staff and Certifiers took to their own regulatory role, which is a matter of particular focus below, there was frequently broad agreement about how the system might be improved at an operational level. In particular, there was essentially universal agreement that, in so far as is possible, it would be useful to keep and monitor the statistics relating to how many Refusals were issued by Certifiers and to report that back to Certifiers. This was both so that WorkSafe and Certifiers could have transparency on this issue and be able to work towards consistency of approach – which is clearly not currently being achieved.
8. The data could be used to highlight whether some Certifiers were not notifying Refusals at all, or only very rarely, so that questions could be raised over that issue – or whether some Certifiers may be over-notifying for whatever reason (such as not sufficiently exercising the broad discretion to issue Conditional Certificates where appropriate). It was generally agreed that it would be appropriate for Certifiers to be taking, to the extent possible, a consistent approach and that the keeping and sharing of relevant data would assist in raising "red flags" for WorkSafe, who may wish to ask questions of Certifiers, and for Certifiers themselves, who may wish to reflect on their own practices (as some already have). The general view here was that "what gets measured gets managed." While some of my findings and recommendations may reflect the views of some of those spoken to, the views expressed are very much my own.

### **Findings and recommendations**

9. My high-level findings and recommendations are set out immediately below. More detail as to the reasoning for those findings and recommendations is set out in more depth in the following discussion.

#### *Findings*

10. My findings are that:
- (a) While I do not have any direct evidence of any particular instance of such failure, the statistical evidence at **Annexure 3** strongly suggests that it is most likely that there are instances, historically, where some certifiers have either not been notifying WorkSafe of their Refusals or have issued Certificates when they should not have done so.
  - (b) While WorkSafe has been suspicious of such failings in the past, the data revealed by [REDACTED] requests under the Official Information Act 1982 (**OIA**) has tended to confirm those suspicions.
  - (c) Particularly at workshops held for Certifiers, WorkSafe has sought to encourage Certifiers to take a more robust approach to Refusals, particularly in relation to the amount of time that

might be allowed to PCBU<sup>1</sup> in order to achieve compliance, and to notify WorkSafe of such Refusals. Such encouragement has, however, particularly until recently, had very limited success.

- (d) The primary reason for the very low rates of Refusals among most Certifiers is because of a widely held view among nearly all Certifiers that it is appropriate for them, within their perception of what is reasonable and pragmatic, to work to assist PCBUs to meet any relevant requirement in advance of the expiry of any Certificate such that they are not in a position to have to issue a Refusal.
- (e) The revealing of the data following 9(2)(a) OIA requests has led to some appropriate self-reflection among some Certifiers, including, in at least one case, extensive reviews of their own internal processes – which has led to an increase in notifications of Refusals.
- (f) It is currently difficult for WorkSafe to compile statistical data on the recording of Refusals as a proportion of Certificates and Conditional Certificates granted because data about Refusals is entered onto a different database (being the WorkSafe Guardian database (**Guardian**)) to the Compliance Certificate Register (**Register**) which houses information about Certificates and Conditional Certificates.
- (g) There is an issue with the lack of consistency between Customer Operational Servicing Team (**COS Team**) members in how they record data in Guardian regarding Refusals, which again makes it difficult to extract the relevant data.
- (h) While WorkSafe has a reasonably consistent approach to dealing with Refusals, it is not entirely consistent in material respects, and there is no general written guidance within WorkSafe as to how to deal with Refusals from the time of receipt through to the resolution of the relevant non-compliance.
- (i) Refusals are not necessarily triaged upon receipt by or to those with the requisite levels of expertise to manage them appropriately and to ensure that the high-risk notifications are correctly prioritised and acted upon promptly by those with appropriate skills.
- (j) WorkSafe currently gives limited guidance to Certifiers as to appropriate approaches to the Regulations and the Performance Standards which guide the interpretation of the Regulations and there is no written document which sets out how WorkSafe should go about giving such guidance.

### *Recommendations*

11. My recommendations are that:

- (a) WorkSafe should record data of the type revealed by 9(2)(a) OIA requests and share that data with Certifiers on a quarterly basis and at workshops in the most transparent way possible.
- (b) Both WorkSafe and Certifiers should monitor and reflect on that data in an ongoing way to consider what it might suggest about possible improvements to their own internal processes.
- (c) WorkSafe should have an internal document which provides written guidance, at a high level, on the appropriate means of processing a Refusal within WorkSafe from the time of receipt to the time of resolution (avoiding too much prescription which could unnecessarily hamper management discretion).
- (d) While use of the standard WorkSafe form for Refusal notifications (**Standard Form**) is not prescribed by the Regulations, WorkSafe should emphasise that, as a matter of best and standard practice, such a form should be used.

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<sup>1</sup> Person Conducting a Business or Undertaking. I note that nearly all certifiers referred to the PCBUs with whom they worked as “clients”. This could be seen as carrying the connotation that they are working more for the relevant PCBU rather than carrying out a regulatory supervisory role of the PCBU – albeit for a fee. Accordingly, the more neutral term “PCBU” is used here.

- (e) The Standard Form should have a means by which the Certifier can put the COS Team on notice in the event that there is any particular issue that has to be dealt with as a matter of urgency – which the Standard Form does not currently do.
- (f) The Standard Form should ultimately be able to be filled in electronically as part of a programme of work within WorkSafe called Digital Transformation.
- (g) The COS Team should be provided with guidance on how to record Refusals consistently within Guardian.
- (h) Either at the stage of allocation of a Refusal to the relevant regional office, or at the stage of allocation to the inspector, and in cases where it was not obvious that the matter could be dealt with administratively (such as site plan lacking in details), someone with relevant expertise should triage the Refusal to ensure that it goes to an appropriate inspector and any particular risk factors can be identified – with a particular view to ensuring that high-risk notifications are correctly prioritised and acted upon promptly by those with appropriate skills.
- (i) WorkSafe personnel should be encouraged to take a precautionary approach to both allocation of Refusals and to who should inspect the relevant site in the event that a site visit is appropriate, with a view to ensuring that those with the requisite skills are engaged.
- (j) To the extent that it is not doing so already, WorkSafe should encourage a culture of requesting assistance from someone within the Hazardous Industries Team or the other Hazardous Substances Technical Specialists in Technical Programmes and Support – that is an “if in doubt, always ask” approach.
- (k) WorkSafe should follow up all Refusals in some way with both the Certifier and the PCBU.
- (l) WorkSafe should have an internal written document which sets out how WorkSafe goes about giving guidance to Certifiers as to appropriate approaches to the Regulations and the Performance Standards which assists Certifiers with the interpretation of the Regulations and Performance Standards. Such a document should provide a mandate to WorkSafe staff which might otherwise be uncertain.
- (m) WorkSafe should provide more guidance to Certifiers on where to draw the line on notifications of Refusals (for example on technical and minor non-compliance and Conditional Certificates) and how to exercise their discretions.
- (n) While not looking to usurp the role of Certifiers in any particular case, WorkSafe should have a process of providing transparent written responses to technical queries raised by Certifiers to all other Certifiers so that all Certifiers can have a consistent understanding on WorkSafe’s position on particular issues.
- (o) While neither the Regulations nor the Practice Statement prescribe timings, WorkSafe should continue suggesting to Certifiers that it would not generally be appropriate to allow a PCBU more than 30 days to comply with a request for compliance before issuing a Refusal notification (unless a Conditional Certificate can be issued), which would seem to be consistent with current best practice (while emphasising that the Health and Safety at Work (Hazardous Substances – Information and Process Requirements for Compliance Certifiers) Performance Standard 2019 (**Performance Standard**) requires a Certifier to make the decision as to whether or not to issue a Certificate “as soon as reasonably practicable” after completing the relevant assessment).
- (p) Where possible, if different inspectors within relevant companies are able to inspect sites from year to year (and acknowledging that I am not suggesting that there should be rotation of companies), that should be encouraged so that compliance can be considered by a fresh set of eyes each year.
- (q) Where appropriate, the use of Conditional Certificates should be encouraged.
- (r) As part of the audit and renewal processes (and Certifier monitoring process if one is developed), WorkSafe should ask questions as to whether Refusals are being notified and, if not, why not (and, if a large number of Refusals appear to be being notified, why) – including questions as to the approaches being taken to Refusals. As noted below, in the event that

WorkSafe does adopt a Certifier monitoring process my view is that such monitoring should be carried out by a bespoke team with the requisite expertise in hazardous substances.

- (s) To the extent that is it not occurring already, somebody from within WorkSafe should be regularly monitoring whether the conditions of Conditional Certificates have been met within the requisite time and, if not, engage with the relevant PCBU and Certifier accordingly. WorkSafe should set out a clear process to allow for this.

### **Certifier performance**

#### *Non-notification by Certifiers of refusals to issue Certificates*

12. A preliminary issue is whether Certifiers are:
  - (a) not notifying WorkSafe of their Refusals, in breach of regulation 6.23(2)(b) (whether deliberately or otherwise); and/or
  - (b) issuing Certificates when they should not be.
13. As effectively recognised by clause 4 of the ToR, by the very nature of my review, I am not in a position to make findings about or determine the appropriateness of individual Refusals.
14. Having said that, as set out in the factual narrative at **Annexure 3**, [REDACTED] there are a number of major compliance certification companies who have issued no, or exceedingly few, Refusals in the years 2017-2020. The statistics also show that [REDACTED] and its Certifiers have consistently issued many more Refusals than any other company. The statistics also show that [REDACTED] Refusals have spiked particularly in 2020 after [REDACTED] was purchased by interests associated with [REDACTED]. Following that purchase, or relatively shortly thereafter, a more "no matter what, you notify it" culture was adopted. It should, however, also be noted that the view was also taken that a large number of files across the country, in respect of which no notification had previously been given, required notification, leading to a particular spike in 2020. [REDACTED]
15. One interviewee suggested that the reason why most Certifiers were able to issue no or exceedingly few refusals could be because those Certifiers were able to guide all relevant PCBUs through the process. However, the general consensus was, unsurprisingly, that it could not be right that such low levels of non-compliance were being found. One would expect to see that each Certifier working with the same or similar mandates notifying a relatively similar level of refusals rather than a number of Certifiers issuing no refusals and one company in particular having a massive spike of Refusals.
16. It bears emphasis that some Certifiers will never log a notification because they do not have to. In the case of applications for pyrotechnic displays for outdoors, or for Approved Filler licences to fill gas bottles, for example, an application would either be accepted, and a Certificate issued, or the application would be declined without the need for a Refusal – or notification. The fact that different Certifiers have different mandates will inevitably skew the figures to a degree.
17. Despite the above points putting caveats on the data, they do not provide a full explanation of the clear discrepancies between the figures. Further, the expectation that there should be a smoother curve among the Certifiers was expressed even among those who were of the view that it was appropriate to work with PCBUs in order to achieve compliance in advance of a Certificate expiring rather than issuing a Refusal. Accordingly, my view is that, while I do not have any direct evidence of any particular instance of such failure, the statistical evidence at **Annexure 3** strongly suggests that it is most likely that there are instances, historically, where some certifiers have either not been notifying WorkSafe of their Refusals or have issued Certificates when they should not have done so. To my mind, I do not need to express a view on whether some of such instances may have been a deliberate breach of the Regulations or otherwise and I do not do so (noting that I have no evidence before me of any deliberate breach in any particular instance).
18. It should be acknowledged from the start that the very low rates of Refusals are indicative of a widely held view among nearly all Certifiers that it is appropriate for them, within their perception of what is reasonable and pragmatic, to work assist their "client" to meet any relevant requirement in advance of the expiry of any Certificate such that they are not in a position to have to refuse to issue

a Certificate.<sup>2</sup> A slightly different way of achieving the same outcome would be for a Certifier to delay the making of any determinative decision as to whether a Certificate should be issued – thereby giving the “client” more time to resolve the issue.<sup>3</sup>

19. In this regard, the relevant wording of regulation 6.23(2) is that:

(2) If a compliance certifier considers that a relevant requirement has not been met, the certifier must –

- (a) refuse to issue a compliance certificate; and
- (b) notify the applicant in writing of the refusal and the reasons for the refusal; and
- (c) notify WorkSafe of the refusal and the reasons for the refusal.

20. As is immediately apparent, what the wording in the regulation does not do is set out a specific time by which the “relevant requirement” must be met. Further, clause 7(5) of the Performance Standard simply provides that:

(5) A compliance certifier must –

- (a) assess an application for a compliance certificate and all relevant supporting information promptly; and
- (b) make the decision as to whether or not to issue a compliance certificate, -
  - (i) *as soon as reasonably practicable* after completing that assessment; and
  - (ii) independently of any recommendation made by a person employed or engaged by the compliance certifier. [Emphasis added].

21. This lack of a strict time by which the “relevant requirement” has to be met is what is generally relied on by Certifiers who take the approach of working with their “clients” to achieve compliance with a relevant requirement which may not have been met at the time of initial assessment. Further, such Certifiers say, as a matter of pragmatism, if a requirement can relatively easily and shortly be met, then it makes sense for the PCBU to fix up any problems thereby allowing a Certificate to be issued.

22. A further approach that a Certifier might adopt to achieve a “pragmatic” outcome would be to rely on regulation 6.23(3) which provides that:

(3) Despite subclause (2), the compliance certifier may issue a certificate if satisfied that any potential adverse effect from the relevant requirement not being met –

- (a) has been satisfactorily avoided; or
- (b) in the case of a hazardous substance location, can be satisfactorily avoided by issuing a conditional compliance certificate under regulation 6.24.

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<sup>2</sup> One Certifier with █████ indicated that this was generally not his view – making the point that even if there was a Certificate which did not expire for, say two months, that would not make the site compliant if it was clearly not compliant. His point was that the relevant risk would be present even if there was a current valid Certificate. He was also of the view that WorkSafe should be notified in the case of inadequate site plans (which was contrary to the view of most other Certifiers, and certain WorkSafe staff, but consistent with the view of █████). He was further emphatic that WorkSafe should be notified in the event of a lack of evidence of adequate training – whereas other Certifiers would be more inclined to allow a grace period for such training to be completed. Similarly, █████ also said that █████ now considered a failure to train as such a significant issue that a Conditional Certificate should not be issued – unless it was a situation in which, for example, 22 out of 24 staff had had the requisite training. The █████ Certifier’s view was that, if a site was not compliant, then it was appropriate for WorkSafe to be engaged and get the site compliant by giving advice and guidance, rather than that being the Certifier’s role. He did, however, also acknowledge that, while █████ would immediately notify in respect of significant issues or if a PCBU was unwilling to engage, █████ would generally give a PCBU roughly 30 days to resolve an issue. Following this 30 days, █████ would issue a Refusal if the PCBU had done nothing, or a Conditional Certificate if the PCBU was trying to engage. █████ also acknowledged that, unless there was some material issue requiring immediate notification, some grace time could be granted subject to the need to comply with the Performance Standard which requires a Certifier to make the decision as to whether or not to issue a Certificate “as soon as reasonably practicable” after completing the relevant assessment. Like the █████ certifier, █████ confirmed that █████ would notify unless a decision was made to issue the Certificate within 30 days. Accordingly, then, all Certifiers were prepared to allow some time to remedy non-compliance which was not seen as presenting an immediate danger.

<sup>3</sup> Given the somewhat disingenuous nature of such an approach, it was understandably not explicitly endorsed by any Certifiers. It was also disapproved of by the █████ Certifier to whom I spoke.

23. While the issuing of Conditional Certificates is dealt with below, clause 6.23(3)(a) does give Certifiers some discretion when dealing with non-compliance if their view is that any potential adverse effect from the relevant requirement not being met has been satisfactorily avoided.<sup>4</sup>
24. It was striking that all of those interviewed clearly saw some justification for a degree of flexibility on this issue – with no interviewee suggesting that it would be appropriate to issue an immediate Refusal for a minor non-compliance which could be easily rectified within a short time frame.<sup>5</sup>
25. However, interviewees also recognised that there is a downside of such flexibility. There is always a risk, particularly in a “client” context, that a Certifier will be too unwilling to issue a refusal – particularly if under pressure from the PCBU not to – and to let non-compliance/failure to address an issue which had been raised drift. At least one WorkSafe interviewee acknowledged that they had been told by Certifiers in the past that PCBUs were “the clients” who could get rid of their business and find another Certifier if they were unhappy with a Certifier’s decision. This is, of course, always a risk in a model where the person being regulated is paying the fee of the person standing in the shoes of the regulator.
26. In my view, the fact of this risk, and accepting that it is not the role of this review to suggest any policy changes, means that both WorkSafe and Certifiers, need to be ever aware of the need to avoid or resist any pressure from PCBUs to grant a Certificate, or resist the notification of a Refusal, where it is not appropriate to do so – particularly where non-compliance is not being promptly addressed and/or the non-compliance is not minor.
27. A Certifier will, of course, want to maintain healthy relationships with PCBUs in so far as is possible. However, the point that the Certifier is acting in a regulatory capacity, and indeed is a part of the enforcement side of the regulatory regime, rather than a consultant, needs to be constantly borne in mind so that appropriate levels of professional scepticism can be exercised and in order to avoid the risk of becoming an acquiescent gatekeeper. Further, despite the lack of clear time frame, Certifiers must give effect to the wording of “as soon as reasonably practicable after completing that assessment” such that, subject to the points below, any delays in achieving compliance result in a Refusal or, at least, a Conditional Certificate.
28. In this regard, I note that one Certifier interviewed said that, when he saw his own company’s low Refusal reporting rate, he felt compelled to review that company’s internal processes regarding Refusals. That review involved setting up better document control processes (including checklists), documenting the company’s Refusal process (including setting up timelines and other process steps), using a modified management system to capture jobs and notes, schedule inspections and record interactions with PCBUs as well as keeping track of sites, Certificates and expiries. It also involved keeping a spreadsheet on Refusals – which led to further self-reflection and then generally further improved processes. The review also, in turn, led to an increased rate of Refusals being issued – with the interviewee suggesting that his company had increased its rate of Refusals to approximately 25-30 this year. He said that the company had tightened up the timeframes in which it would allow its requests for information to be returned by the PCBU to within 20 days of the request to the company (with that request being made within 10 days of the relevant inspection). A Refusal would be issued if the PCBU was unable to meet that timeframe<sup>6</sup> (or immediately if it was felt that there were unsafe practices going on at the site). The interviewee felt that the advantages of the review process undertaken was that it had led to an outcome which avoided overloading WorkSafe with minor notifications, promoted compliance as a process and provided clear documentation of how a decision to make a Refusal was reached.

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<sup>4</sup> I understand that WorkSafe has indicated at workshops that it would be necessary to do a risk assessment in order to be able to rely on this provision and that it should be used as an exception rather than the rule. The [REDACTED] Certifier to whom I spoke indicated that he did not use this approach because of the need to produce a full risk assessment in order to make use of it. His view was that it would be preferable for PCBUs to seek an appropriate exemption from WorkSafe. One other Certifier also indicated that he was not keen on using this approach. A concern expressed was that to adopt this approach would shift responsibility away from the PCBU and onto the Certifier.

<sup>5</sup> The [REDACTED] Certifier to whom I spoke indicated that, while [REDACTED] would immediately notify in respect of significant issues or if a PCBU who was unwilling to engage, [REDACTED] would give a PCBU roughly 30 days to resolve an issue. This time period was consistent with the view of at least one member of WorkSafe personnel who was highly experienced in hazardous substances regulation. That WorkSafe employee stated that “if you’re working with the PCBU stretches for more than a month, forget it, it’s notify” – while clarifying in writing that this was unless a Conditional Certificate could be issued.

<sup>6</sup> I note that although no reference was made to the approach of WorkSafe or any other certifier, this approach was consistent with the sorts of timeframes suggested by the certifier I interviewed from [REDACTED] and at least one highly experienced member of WorkSafe.

29. To my mind, the above approach was an entirely appropriate response by the Certifier concerned upon being confronted with the data which has not generally been previously available. It is to be hoped that having more transparency over such data within the industry will lead to conversations and reflections which result in a greater degree of issuing of Refusals, and reporting of those, when appropriate. The extent to which WorkSafe can appropriately guide and direct those conversations and reflections, as part of the audit, renewal and Certifier monitoring processes, are dealt with in more detail below.

#### *The issuing of Conditional Certificates*

30. Despite the inherent problems in doing so, the allowing of some flexibility is, to an extent, consistent with the regulatory scheme. As noted above, regulation 6.23(3)(b) provides that a Certifier may issue a Certificate if satisfied that any potential adverse effect from the relevant requirement not being met, in the case of a hazardous substances location, can be satisfactorily avoided by issuing a Conditional Certificate under regulation 6.24.
31. Regulation 6.24 in turn provides that a Certifier may issue a Conditional Certificate in relation to any relevant requirement relating to hazardous substance locations if satisfied that a failure to meet the relevant requirement is minor. Such a Certificate must specify the date (no more than 3 months after the issue of the Certificate) by which the relevant requirement must be met.
32. The statistics in the factual narrative show that Conditional Certificates are being used by most Certifiers. However, there were some suggestions that Conditional Certificates could be used even more frequently in cases of minor infringements – such as incorrect site plans (although acknowledging that they are already frequently being used in that context).
33. In my view, while regulation 6.24(1) does require a Certifier to be “satisfied that a failure to meet the relevant requirement is minor”, the very existence of the Conditional Certificate in the Certifier’s tool box does suggest that it is an appropriate tool to use when it can be. To my mind, it is appropriate that it is being used for purposes shown in Table 2 of **Annexure 3**, which highlights that, where a Conditional Certificate is being used (and a reason for such use is recorded), they are most commonly used in respect of matters relating to issues such as site plans, staff training, emergency response plans and signage.<sup>7</sup> In saying this, I in no way intend to suggest that there would not be circumstances in which a Certifier would think, as a matter of their judgement in the context, that it would be entirely appropriate to issue a Refusal, rather than a Conditional Certificate, in respect of any of such matters. I fully acknowledge that, in any particular given context, prompt remediation of any non-compliance may be crucial.

#### **WorkSafe regulatory performance**

##### *The receipt, recording and response to notifications of Refusals*

###### Receipt

34. While there is a pdf form available on the WorkSafe website for notifications of Refusals, a preliminary point to note is that the Regulations do not prescribe the means by which a Certifier must notify WorkSafe of any Refusal. This raises an immediate issue for both data collection and, more immediately, the management of any notification of Refusal by WorkSafe. An oral notification, or notification not using the available form, is unlikely to be recorded as a Refusal by WorkSafe and, more importantly, is likely to bypass any standard channels that WorkSafe may wish to employ.
35. There may be some advantages to an informal notification of a problem to WorkSafe. The Certifier may be able to talk through and resolve the relevant issue with WorkSafe personnel with relative administrative ease. There are, however, problems with this approach – most obviously:

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<sup>7</sup> Different interviewees had different views on the importance of these issues. However, I note that one WorkSafe interviewee did make the observation in relation to refusal notifications, and while clarifying that he was not exactly clear on the figures, that “like 80% was just for little things like a site plan or training or signage not being in the right place, nothing to do with [whether] the site will blow up if nothing is done.” In my view, while such issues should not be trivialised (and I emphasise that the interviewee was not seeking to do so), the observation that there are degrees of risk, and that some matters are more critical than others, is a fair one. Further, it bears emphasis that differing views on whether these matters are worthy of notification, or whether they are better dealt with through working with the PCBU, or Conditional Certificates, provide a large degree of explanation as to why the notification figures are so radically different between Certifiers.

- (a) The relevant issue may not be directed to a person with appropriate expertise.
  - (b) A Certifier may be tempted to deal with the matter, in the apparent interests of their “client”, with someone at WorkSafe who is insufficiently professionally sceptical of what it is that they are being told.
36. The point regarding the need to direct the relevant issue arising from a refusal to someone within WorkSafe with appropriate expertise was repeatedly raised. There is a clear risk, given the highly specialised nature of hazardous substance work, that a member of the general inspectorate would not understand the significance of a particular notification. There is a clear need for someone with appropriate hazardous substances expertise to triage notifications of Refusals so that they can assess risk and prioritise.
37. A further preliminary issue is that there is currently no written process for dealing with a Refusal when it comes in or for elevating the Refusal to an appropriate specialist. From discussions with WorkSafe interviewees, I understand that the process is generally as follows in the Northern and Central regions<sup>8</sup> (noting that I understand that the five regional offices in the Central region have been collaborating with a view to ensuring that they are as consistent as possible):
- (a) A Refusal will be provided to the COS Team within WorkSafe, generally via the Standard Form – a pdf copy of which is on the WorkSafe website, albeit that the form is not currently filled in electronically.
  - (b) The Refusal is then allocated by the COS Team to the relevant regional office of the general inspectorate.
  - (c) The manager in the relevant regional office (who will not necessarily have the relevant hazardous substances expertise, or any particular hazardous substances expertise at all), in conjunction with a Support Officer, will then allocate the Refusal to the most appropriate person within that office (who again will not necessarily have the relevant expertise) from a “bucket”.
  - (d) By the time the Refusal is allocated and the PCBU is contacted by phone, which happens for each Refusal, the relevant issue may well have been addressed by the PCBU and a Certificate granted. In the event that the Certificate has been granted, this is then sent to WorkSafe for confirmation.
  - (e) Either the manager allocating the Refusal, or the inspector to whom the Refusal is ultimately allocated, can then either carry out a desk-based follow up or, if required, a site visit.
  - (f) A site visit could either be done with a view to providing education or technical assistance to understand how to work through the relevant non-compliance or, if required, some form of enforcement action. Alternatively, the site visit could possibly confirm that there is no non-compliance, that the error lies with the Certifier and that the course of action recommended by the Certifier does not have to be carried out. The manager or inspector can also obtain assistance from other personnel within WorkSafe, such as the Hazardous Substances Technical Specialists in Health and Technical Services or the Hazardous Industries Team, who have the requisite expertise and who can either provide advice or visit the relevant site. I understand that this frequently occurs but am not able to determine how often advice should have been sought but was not sought.
  - (g) There is no obligation on WorkSafe to acknowledge the receipt of the Refusal to the Certifier, or to engage with the Certifier to seek to resolve the issue which led to the Refusal. This may or may not occur but in my view would be a sensible approach in progressing the matter – as well as engaging with the Certifier who may otherwise be in the dark as to what followed on from their issuing of the Refusal. Certifiers who expressed a view indicated that they appreciated getting feedback from WorkSafe that the relevant form had been received and that the issue had been looked at by WorkSafe. I should note that at least one Certifier indicated that he felt that he got a good and timely response to his notifications.
  - (h) Once the matter is resolved, and the Certificate is attached to the file in order to confirm that, the file can be closed.

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<sup>8</sup> The process is different in the Southern region, as outlined below.

38. For the most part, the above process may well work with relevant managers and inspectors making appropriate judgement calls about when to get assistance as required. However, WorkSafe interviewees did acknowledge that, in a number of cases, there may well be a need to ensure that the process is varied to ensure that the right people are promptly able to have visibility of any potential "red flags" – ideally at all stages of the process from receipt to resolution.
39. A number of helpful suggestions, which I agree with, were made to allow for greater visibility of "red flags":
- (a) To provide greater consistency, there should be a written document which provides a general outline for how Refusals are dealt with from receipt through to resolution.
  - (b) While use of the Standard Form is not prescribed by the Regulations, WorkSafe should emphasise that, as a matter of best and standard practice, such a form should be used. This would allow for better data recording and also avoid the problems discussed above, regarding data collection and appropriate allocation, arising from the bypassing of the Standard Form.
  - (c) The Standard Form should have a means by which the Certifier could put the COS Team on notice if there was any particular issue that had to be dealt with as a matter of urgency – which the form does not currently do – so that the Refusal could be dealt with accordingly by the COS Team.
  - (d) Either at the stage of allocation to the relevant regional office, or at the stage of allocation to the inspector, and in cases where it was not obvious that the matter could be dealt with administratively (such as site plan lacking in details), someone with relevant expertise should triage the Refusal to ensure that it goes to an appropriate inspector (with appropriate additional expert advice if required) and any particular risk factors can be identified – before, during and after the potential site visit. The concern here is that "red flags" may be missed as those without sufficient expertise will not be aware of what they do not know and so may miss issues that may be more apparent to a more expert eye – or may be more easily brushed off by a PCBU pushing back on potential criticisms.
40. Another point acknowledged by WorkSafe interviewees was that it would be appropriate for WorkSafe personnel to be encouraged to take a precautionary approach to both allocation of Refusals and also who should inspect the relevant site in the event that a site visit is appropriate. In respect of site visits, this would be so matters which might otherwise be overlooked, but which are red flags to a person with the requisite degree of expertise, can be observed. In this regard, taking a precautionary approach in referring a matter back to a more senior person with relevant experience is probably more likely to result in a positive outcome.
41. To my mind, WorkSafe, to the extent that it is not already, needs to encourage a culture of requesting assistance from someone within the Hazardous Industries Team or the other Hazardous Substances Technical Specialists in Technical Programmes and Support – that is an "if in doubt, always ask" approach. The concern here is that what will be a red flag to someone with appropriate expertise will be overlooked or not noticed by someone without the requisite expertise. Given the highly specialised nature of the area, in which different types of expertise may well be called for in respect of each individual site visit, the concern is that unless someone knew exactly what they were looking for things could easily be missed.
42. For completeness, I should also note that the approach outlined above in respect of the Northern and Central regions is not entirely consistent with that followed in at least parts of the Southern Region. In the Christchurch office, I understand that the Refusal is initially passed to the Support Officer and it is only if she finds something that she thinks needs to be looked at that a file is created. That file is then sent through to an inspector. I understand that nothing is done with the Refusals other than those which are thought by the Support Officer to require review and PCBUs are only contacted in the event that an inspector is following up because a file has been created. While that Support Officer has been given some parameters, in my view there is a risk that triaging at this level without appropriate expertise could lead to issues being missed. Further, the view was expressed by at least one other person in WorkSafe, who had previously been an inspector and trained inspectors, that it would be appropriate for WorkSafe to follow up on each Refusal. While I appreciate that there may well be resourcing issues, I agree with this view – even if the only follow up is, for example, to make contact with the Certifier and PCBU and get a copy of, say, the ultimately compliant site plan. As one WorkSafe interviewee noted, given that a Certifier is compelled to notify WorkSafe because they have not issued a Certificate that means that they are having difficulty getting the PCBU to comply. The purpose of that notification is to put WorkSafe on notice of that so that WorkSafe can

assist the process. The same WorkSafe interviewee again suggested that it would be useful for an inspector to contact and engage with the Certifier on each occasion so that the inspector had a good idea of what the issue was before the PCBU was contacted and so that the relationship between the inspector and the Certifier could be developed. Again, I agree with this view.

#### Recording

43. The COS Team, which essentially acts as WorkSafe's front door, creates a Guardian response file for each of the Refusal notifications which it receives – as it does for all notifications and complaints. Guardian is the WorkSafe case management system that inspectors use across WorkSafe. This is distinct and separate from the Register which records information in relation to Certificates and which is a stand-alone register that Certifiers can access to enter information about Certificates which they have issued. The Register is separately maintained by the Hazardous Industries (Certificates) Team, which also provides access to the Register.
44. The fact that the Register is housed separately from Guardian creates challenges for WorkSafe in retrieving and sharing data in this area. Challenges are also created by the fact that there is an inconsistency between COS Team members in how they record data in Guardian. As I understand it, the Register is useful in allowing certain external parties, such as councils, the New Zealand Police and the Fire Service, access to important and useful information about Certificates and sites where hazardous substances are stored. However, because Refusals are directed to the COS Team which records them in Guardian, the Register does not show Refusals. Accordingly, the relevant information regarding Certificates and Refusals is coming into WorkSafe via two entirely different channels and going into two entirely different systems. These systems are also dealt with by different teams. I understand that it is much easier for WorkSafe personnel to extract information about Certificates granted or approved out of the Register than it is to obtain information about Refusals from Guardian. Further, the team which has oversight of the Register does not include warranted inspectors and therefore does not routinely use Guardian. As a result, that team does not have oversight of non-compliance matters which are dealt with in Guardian. An immediate challenge created by the above issues is that extracting all of the information that WorkSafe might want to analyse from Guardian is not straightforward. Also, examining data of the type that would be useful in our context is a mix and match exercise.
45. I understand that the issues created by the current inability to share data across systems may be resolved as part of a programme of work within WorkSafe called Digital Transformation – which should also allow for an electronic Standard Form. However, to the extent possible, it would be useful to have an interim solution which allowed for the oversight of the Refusals and performance of Certifiers though the relevant data being collected in one place – as it has been in the factual narrative at **Annexure 3**.

#### Response

46. It was emphasised to me by an experienced member of WorkSafe that one reason that Certifiers may not be notifying WorkSafe of Refusals, which has apparently been raised with WorkSafe in the past, is that there has been a perception that nothing is being done by WorkSafe with such Refusals. While some members of WorkSafe indicated that all Refusals would be engaged with in some way, the practice was clearly not universal. To the extent that non-engagement by WorkSafe may still be an issue, my view is that it would be useful for Certifiers to get some kind of acknowledgement of, and engagement with, their notification. To the extent that this could, in part, be done by way of an acknowledging email, this may not be possible to set up automatically as I understand that a large proportion of notifications are emailed to COS Team with multiple forms attached. If, however, an online form were to be used, it may be possible to generate an automatic acknowledgment with a view to subsequent substantive engagement. To my mind such an online form would accordingly be most useful.
47. Additionally, there appeared to be broad agreement that it would be useful to have a form of update to Certifiers, perhaps on a quarterly basis and/or at forums with Certifiers, informing them of the number of Refusals received and what, broadly is being done in relation to those Refusals. This would be with a view to reassuring Certifiers of the value of the notification of such Refusals and to confirm that they are not going into a regulatory void – and thereby becoming bureaucracy for the sake of bureaucracy.

*Timeframe for decision making in relation to notifications of Refusals to issue Certificates*

48. While there are no prescribed timeframes for decision making in relation to notifications of refusals, this was not a matter which appeared to raise particular concerns within WorkSafe. This was because it was felt that WorkSafe staff should be sufficiently knowledgeable to exercise appropriate judgement about prioritising urgent matters – and acknowledging that work would inevitably need to be prioritised within a particular branch. As indicated above, of far greater concern was that Refusals might not be engaged with by WorkSafe at all or might be dealt with by those without the requisite expertise.

*Management oversight of notifications of Refusals to issue Certificates throughout their life, including the documentation of decisions*

49. Again, there is no written guidance about the level of management oversight of Refusals. WorkSafe interviewees tended to suggest that if the issue were minor in nature (such as an issue with a site plan), then there would be no need for management oversight. Rather, it was felt that if there were a red flag issue this should be brought to management attention for oversight as appropriate.
50. While it may be appropriate to have general written guidance on this, such guidance should not be too prescriptive as this would be an area where management will need to exercise judgment and discretion.

*How notifications of Refusals to issue Certificates are processed, including resourcing and the availability of appropriate support*

51. WorkSafe's method of processing Refusals is as set out above. The general inspectorate felt that they had access to appropriate support from the Health and Technical Services team and Hazardous Substances inspectors and that those who were in those teams made themselves available to provide assistance whenever it was needed. It was also indicated their much deeper understanding of the Regulations and compliance requirements could be used to support the general inspectorate with more complex sites – as well as providing additional training and support for newer inspectors who are still learning or for more experienced inspectors who are dealing with something more complex.
52. Some concerns were expressed about the aging nature of those with the greatest degrees of experience in this specialised area, and the relative lack of equivalent expertise in the following generations – which may well create succession planning issues in due course. The addressing of such concerns is, however, beyond the scope of this report.
53. I should also acknowledge that my recommendations above, particularly in relation to triaging of Refusals by those within WorkSafe with appropriate expertise, and more full engagement with Refusals, would, if followed, lead to further demands on those able to offer the available requisite support. This is one of the reasons why I suggest that it would be appropriate for WorkSafe to provide guidance on, and encourage the use of, Conditional Certificates where appropriate. In any event, my view is that issues regarding resourcing and the availability of sufficiently appropriate support are inevitably going to have to be issues that are monitored in an ongoing way.

*WorkSafe's oversight of the notifications of Refusals to issue Certificates, including any use of suspension or cancellation action of a Certificate*

54. WorkSafe currently appears to have little oversight of notifications of Refusals by Certifiers, in so far as it does not currently appear to look closely at the individual decisions of Certifiers *not* to issue a Refusal. While WorkSafe may engage with Certifiers and PCBUs to ensure compliance where a Refusal is issued, there is no reason for WorkSafe to engage if a Certificate is simply granted. It was, however, suggested, and I agree, that further questions could be asked of certifiers in this regard at the time of:
  - (a) Audits – While audits are currently process driven, it would seem appropriate for questions to be asked as to whether Refusals are being notified and, if not, why not (and, if a large number of Refusals appear to be being notified, why) – looking at issues of substance as well as process (to the extent that those auditing have, or have access to, the requisite expertise to do this). This could involve, for example, asking questions about the approach to how much leeway is given to PCBUs to take time to achieve compliance before notifying WorkSafe, to what extent decision making is postponed in order to allow PCBUs time to comply and what approach is taken to regulation 6.23(3)(a) and how risk assessments are carried out. In this regard, those responsible for carrying out audits suggested that since they have become aware of the

discrepancies between Certifiers regarding Refusal numbers they have started to ask questions on this point. These have included questions about cases which were on the edge or could have gone either way, with a view to looking at how the relevant decision making was made. Further, one Certifier interviewed acknowledged that the audit process had encouraged him to issue Refusals where previously he might not have done before. To my mind, this seems like an appropriate means of WorkSafe exercising oversight of decisions regarding Refusals. However, as was acknowledged, it may be that in light of the extent of the discrepancies that even further questions have to be asked as part of the audit process. It was also suggested that it may be appropriate to have more frequent audits in the event that significant discrepancies were found, as would be permissible pursuant to regulation 6.37(2), and that audits should reflect any breaches of the Regulations and/or the Performance Standards. Similarly, it was suggested that there needed to be follow up so that Certifiers would have to respond saying what their responses were going to be.

- (b) Renewal – Further questions along the lines set out immediately above could also be asked at the time when a Certifier seeks renewal (noting that a term of authorisation ends on the earlier of either 5 years after the authorisation was granted or any earlier end date specified by WorkSafe in the authorisation). In this regard I note that WorkSafe may refuse to renew an authorisation if satisfied, having regard to the Certifier’s history of performing a Certifier’s functions, that the Certifier has failed to a significant degree to comply with the Performance Standards. WorkSafe may also renew authorisation of a more limited scope than the current authorisation if satisfied that limited renewal is appropriate in the circumstances. For completeness, I note that WorkSafe’s powers in this regard are subject to appeal to the District Court (with the courts, of course, being the appropriate final arbiter of the meaning of any Regulations or Performance Standards).
  - (c) Certifier monitoring process – At present WorkSafe is working on an authorisations monitoring programme which may extend to Certifiers. My understanding is that this would allow for ongoing questions to be asked of Certifiers – including in relation to Refusals – at intervals between audits. Given the four-year gap between audits (subject to any shortened periods), to my mind this would be a most useful tool for WorkSafe oversight. This is because it would give WorkSafe the ability to examine potential red flag issues with Certifiers across the country as they arose. It would also allow WorkSafe to engage in appropriate guidance and education of the relevant Certifier in order to nudge them towards more appropriate, and more nationally consistent, practices. In the event that WorkSafe does adopt a Certifier monitoring process my view is that such monitoring should be carried out by a bespoke team with the requisite expertise in hazardous substances. One example of where such a process may be useful is in a context where there is a change in Certifier at a particular site. In that context I understand that it is common for the new Certifier to see issues which may not have been observed or addressed by the previous Certifier. If this were brought to the attention of those monitoring Certifiers, it may lead to further useful questions being asked (noting that this point also highlights that it would likely be useful for Certifiers within companies to rotate their inspections of particular sites so that there is not an assumption that any issues will have been picked up on previous visits and so that a fresh set of eyes has the opportunity to review a particular site). Another example might be where one Certifier refused to issue a Certificate but another Certifier issued a Certificate very shortly thereafter. If there were ongoing monitoring of such a process, that could allow for WorkSafe to query whether appropriate actions had been taken relatively closely to the time at which they were taken, which is of obvious importance from a WorkSafe monitoring perspective. This would seem to be a more helpful means of dealing with potential issues as they arise rather than, possibly, years down the track. Overall, as indicated above, a further attraction of this model would be that there would be a team within WorkSafe that would be responsible for observing trends in the issuing of Refusals across the country – which would not be observable by those working out of regional offices who would only have oversight of what occurred in their region. I do acknowledge, however, that such an approach would again place further demands on those within WorkSafe who have the requisite expertise to contribute to this process.
55. WorkSafe interviewees acknowledged that suspension or cancellation action in respect of a particular Certificate is a convoluted process as a result of the need to consult, investigate and hear submissions on any instance where it may possibly be appropriate to suspend or cancel such a Certificate (noting that the relatively involved process is as set out at regulations 6.29 to 6.33). Indeed, the suspension and cancellation process can take many years. While there have been very occasional initiations of suspension or cancellation actions, such actions could not be seen as an effective means of WorkSafe oversight of the certification process. This is particularly so because, by the time an investigation is done, the relevant Certificate will need to have been renewed in any event and a further compliance check should have been done. However, any suggestions for changes to the regulatory framework

on suspensions and cancellations are matters of policy and are therefore beyond the scope of this report.

*Whether notifications of Refusal are followed up, non-compliances confirmed and, if so, decisions made about next steps e.g. inspection and enforcement*

56. As indicated above, there is a varied approach to whether notifications of refusal are always followed up by WorkSafe – and whether and to what extent WorkSafe is engaged on decisions about next steps such as inspection and enforcement.
57. WorkSafe interviewees indicated that in many cases (such as with issues around site plans), there would be no need for an inspection and the issue would either resolve itself or could be resolved via a desk-based approach. However, in some instances an inspection would be required.
58. As indicated above, my view is that there should be a consistent approach to the follow up of notifications of Refusal and that it would be useful to issue high level written guidance on this.

*Communication of WorkSafe's decisions and/or rationale for them to Certifiers and PCBUs*

59. As noted above, there are no written documents prescribing communication of WorkSafe's decisions regarding Refusals and/or rationale for them to Certifiers and PCBUs.
60. In respect of Refusals, there does not appear to be any consistent approach to acknowledging receipt of refusals – which was a point of concern for both Certifiers and some within WorkSafe alike. Again as noted above, the sense that a Refusal was going into a regulatory void was one reason given by Certifiers and WorkSafe as to why Refusals may not be being notified. To the extent that there might not currently be consistent communication of WorkSafe's decisions and/or rationale for them to Certifiers and PCBUs, my view is that there should be.

#### **WorkSafe's practices in relation to the notification of Refusals and the issuing of Conditional Certificates, including communications and other operational matters**

61. WorkSafe's practices in relation to the notification of Refusals are essentially as set out above.
62. In relation to Conditional Certificates, WorkSafe's practices are less clear. I understand that Certifiers should currently update Conditional Certificates directly in the Register, where they record the date on which the relevant conditions were met and issue a new Certificate. I understand that nobody from WorkSafe is routinely whether the conditions of Conditional Certificates have been met and subsequent Certificates have been issued. To the extent that this is correct, somebody from within WorkSafe should be regularly monitoring whether the conditions of Conditional Certificates have been met within the requisite time and, if not, engage with the relevant PCBU and Certifier accordingly. I understand that there is a means to report on this but that it is not routinely being used and that there is no clear process for following up with the PCBU or Certifier.

#### **The role of Certifiers in relation to hazardous substances, including:**

- **WorkSafe's relationship with them and the way in which it obtained assurance regarding their activities in relation to regulation 6.23 and 6.24**
  - **How co-ordinated and aligned WorkSafe's regulatory activities are with the duty imposed on Certifiers to notify WorkSafe of Refusals**
63. WorkSafe's relationship with Certifiers is currently relatively limited. WorkSafe currently is only able to exercise scrutiny over Certifiers at the time at which they are authorised as Certifiers, when their authorisation comes up for renewal, if WorkSafe investigates any complaints or concerns in relation to them or when they are audited (which is to occur at least once every four years). There is nothing in the Regulations to suggest that WorkSafe should be exercising an ongoing quality control role over the Certifiers and there are currently limited means by which WorkSafe can do that. As noted above, however, WorkSafe is starting to focus more closely on issues relating to the notification of Refusals and raising those issues at the time of renewal of authorisations and audits. Further, WorkSafe's activities could be more closely aligned with the duty on Certifiers to notify Refusals if Certifiers were to fall under the Certifier monitoring process if one is developed.
  64. While WorkSafe does already run some workshops and webinars to assist with guidance and training, and clarification around shared understanding of the Regulations, some interviewees, from both WorkSafe and industry, also felt that it would be useful for WorkSafe to have a more clearly defined

role in providing such support. Such interviewees noted that there was previously more of such a defined role when regulation of hazardous substances fell more within the mandate of the Environmental Protection Authority – which engaged more fully with Certifiers in order to assist compliance (acknowledging that this was under a different regulatory framework). While there are informal understandings in this regard, there is no written document setting out WorkSafe’s role in providing such guidance. In my view it would be useful for there to be such a document so that WorkSafe could know the scope of its own mandate in this area. Particularly in a context in which the regulatory front line in relation to hazardous substances has effectively been outsourced to independent Certifiers, it is in my view vital that, in so far as possible, all of such Certifiers, and WorkSafe, are singing from the same song sheet.

**The methods and approach utilised by WorkSafe in regulating regulation 6.23 and their effectiveness**

65. The methods and approach utilised by WorkSafe in regulating regulation 6.23 and their effectiveness are essentially as outlined above. While WorkSafe can exercise scrutiny over Certifiers when they come in for renewal or audit, or when they are the subject of an investigation, it is not easy to scrutinise potential omissions in respect of which data is not currently readily available. However, if the data showing Refusal numbers, and other related data regarding Refusals, is more readily available in real time, and WorkSafe staff are mandated to make use to that data for the purposes of ongoing conversations with Certifiers, then the methods and approach utilised by WorkSafe could only become more effective.

**Tim Smith**

## **Annexure 1 – Terms of Reference**

### ***Independent Review – Notification of refusal to issue a compliance certificate***

#### ***Terms of Reference 29 July 2021***

##### **1. Background**

- 1.1 The Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations) establish a regime under which the compliance of certain people, places and plant with the Regulations must be certified. WorkSafe has the function of authorising compliance certifiers for that purpose. The relevant provisions are set out in Part 6 of the Regulations, along with provisions setting out the duties of compliance certifiers and dealing with disciplinary matters.
- 1.2 [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] Among other things, this included an allegation that compliance certifiers are not complying with their legal obligations and that WorkSafe is not properly performing its regulatory role in that regard. [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]
- 1.3 One of the substantive allegations raised by [REDACTED] [REDACTED] [REDACTED] is that either other compliance certifiers are deliberately not notifying WorkSafe of their refusals to issue compliance certificates, and are therefore breaching their legal obligation under regulation 6.23(2)(b) to do so; or compliance certifiers are issuing compliance certificates for sites when they shouldn't be; or a combination of both of these factors.
- 1.4 This allegation was informed by [REDACTED] recent OIA request to WorkSafe which sought the number of refusal notifications received by WorkSafe from compliance certifiers in 2020 versus the overall number of compliance certificates issued by compliance certifiers in 2020.
- 1.5 This data highlighted that seven of the ten largest certifying companies did not make any notifications to WorkSafe of refusals to issue compliance certificates. [REDACTED] was responsible for 91% of all notifications of refusals to issue compliance certificates received by WorkSafe in 2020.
- 1.6 Notification to WorkSafe is important as it might indicate that a site is operating in breach of the Regulations. However, [REDACTED] further states that WorkSafe has not only been aware of the failure to notify for a long time but has not done anything about it.
- 1.7 WorkSafe wishes to have an independent view of [REDACTED] allegations. WorkSafe also wishes to review its own regulatory performance in relation to the notification of refusals to issue compliance certificates, in order to help it in its journey to become a world-class regulator. Key to this will be identifying areas in which WorkSafe's oversight of the notifications of refusals to issue compliance certificates could be improved.

- 1.8 With the approval of the Chief Executive, the Head of High Hazards, Energy and Public Safety has commissioned an independent review of these matters.
- 1.9 With respect to the other allegations stated by [REDACTED], WorkSafe has a number of internal programmes of work in progress (e.g. legal obligations and service design projects focussing on WorkSafe's authorisations functions), is supporting a project led by HASANZ to develop a professional pathway for new and existing compliance certifiers and has commissioned a separate external independent review looking at the suspension and variation of authorisations to address these other matters.
- 1.10 MBIE have also commenced their review of the Regulations which will cover the more technical matters raised by [REDACTED], which are specific to the way in which the Regulations were drafted and Australian/New Zealand standards referenced which have allegedly created additional complexity for compliance certifiers.

## **2. Objectives**

- 2.1 The objectives of the review will be to:
- a. provide WorkSafe an independent and practical perspective on:
    - i. compliance certifiers performance in relation to their obligation to notify refusals to issue compliance certificates; and
    - ii. WorkSafe's regulatory performance in relation to notifications of refusal to issue compliance certificates; and
  - b. identify any learnings or opportunities that exist for improvement.

## **3. Deliverables**

- 3.1 There are three interrelated deliverables that form the review:

(i) Factual narrative

This is a timeline, data analysis and narrative of notifications of refusals to issue compliance certificates for the calendar years from 2017 to 2020. This will include compiling the corresponding documentation and records relating to each refusal.

(ii) Report of compliance certifier performance

Based on the factual narrative, to reflect and report upon compliance certifiers performance in relation to the legal obligations imposed on them by regulation 6.23 and the discretion available under regulation 6.24 of the Regulations.

(iii) Report of WorkSafe regulatory performance

Based on the factual narrative, to reflect and report upon WorkSafe's performance in relation to its regulatory oversight of compliance with regulation 6.23 of the Regulations. This includes whether notifications of refusal are followed up, non-compliances confirmed and, if so, decisions made about the next steps e.g. inspection and enforcement.

## **4. Scope**

- 4.1 [REDACTED]

- a. Consider the 'refusal to issue a compliance certificate notifications' process, including:
  - The non-notification by compliance certifiers of refusals to issue compliance certificates
  - The issuing of conditional compliance certificates by compliance certifiers
  - The receipt, recording and response to notifications of refusals to issue compliance certificates
  - Timeframes for decision making in relation to notifications of refusals to issue compliance certificates
  - Management oversight of notifications of refusals to issue compliance certificates throughout their life, including the documentation of decisions
  - How notifications of refusals to issue compliance certificates are processed, including resourcing and the availability of appropriate support
  - WorkSafe's oversight of the notifications of refusals to issue compliance certificates, including any use of suspension or cancellation action of a compliance certificate
  - Whether notifications of refusal are followed up, non-compliances confirmed and, if so, decisions made about the next steps e.g. inspection and enforcement.
  - Communication of WorkSafe's decisions and/or rationale for them to compliance certifiers and PCBU's
- b. Consider WorkSafe's practices in relation to the notification of refusals to issue compliance certificates and the issuing of conditional compliance certificates, including communications and other operational matters.
- c. Consider the role of compliance certifiers in relation to hazardous substances, including:
  - WorkSafe's relationship with them and the way in which it obtained assurance regarding their activities in relation to regulation 6.23 and 6.24;
  - How co-ordinated and aligned WorkSafe's regulatory activities are with the duty imposed on compliance certifiers to notify us of refusals to issue compliance certificates
- d. Consider the methods and approach utilised by WorkSafe in regulating 6.23 of the Regulations and their effectiveness.

4.2 As a part of the review, the Reviewer will not:

- a. Make findings about or determine the appropriateness of individual notifications for refusal to issue a compliance certificate, (though may recommend that particular notifications be revisited by WorkSafe).
- b. Consider the correctness or quality of any legal advice provided
- c. Make findings or recommendations that are specific to individual parties (including identifiable WorkSafe staff members), other than WorkSafe or particular WorkSafe teams
- d. Consider any transfer of functions to or from WorkSafe
- e. Make recommendations concerning WorkSafe's organisational structure
- f. Consider whether amendments should be made to existing legislation.
- g. Make findings or recommendations about the competency and capability of WorkSafe staff or the training provided to staff
- h. Make findings or recommendations about policy or policy matters

4.3

[REDACTED]

## **5. Approach**

- 5.1 The review will be conducted through the review of documentation, data analysis and interviews with key WorkSafe personnel and (where they agree) relevant 3<sup>rd</sup> party compliance certifiers and their professional bodies, as identified by the Reviewer.
- 5.2 WorkSafe will provide relevant documentation and data for the compliance certificates issued between 2017 and 2020 and the refusal to issue a compliance certificate for the same period. The Reviewer may request further information that he considers would be beneficial to the review. The Head of High Hazards, Energy and Public Safety will assess the benefit of any such requests against the impact of their inclusion on the timescales and costs of the review before approving or declining any request.
- 5.3 Where the provision of further information is approved, WorkSafe will provide this within 3 working days, providing such information exists and WorkSafe can be reasonably expected to provide it.

## **6. Structure of the Review**

- 6.1 The Reviewer is:
  - a. Tim Smith – Reviewer
- 6.2 The Reviewer’s support is:
  - b. Rachel Carne – Review secretariat

## **7. Accountability**

- 7.1 The Reviewer will be accountable to the Head of High Hazards, Energy and Public Safety for all aspects of the review, including its deliverables.

## **8. Resource & Support**

- 8.1 The Reviewer will be given access to all existing written materials he identifies as necessary to complete the review, subject to paragraph 5.2. In addition, the Reviewer may speak to WorkSafe staff and third parties as he requires.
- 8.2 WorkSafe will make secretariat support available to the Reviewer. The role of the secretariat will be determined by the Reviewer, and could include such things as setting up meetings, printing papers, note taking, and arrangements for members travel, accommodation and expenses.
- 8.3 The Reviewer will not hold a discretionary budget. If expenditure is required for the Reviewer to complete the review (for example, travel to speak to third parties) then the requirement will be lodged with the Head of High Hazards, Energy and Public Safety for consideration.

## **9. Deliverables**

- 9.1 The Reviewer will deliver a written report which responds to the reviewed objectives and scope. This will be delivered by the following dates:

- a. Factual narrative – 15 September 2021
- b. Report of regulatory performance (compliance certifier) – 15 September 2021
- c. Report of regulatory performance (WorkSafe) – 15 September 2021

## **10. PSA**

- 10.1 The PSA will be informed by WorkSafe prior to the commencement of the Review.

## **11. Meetings and Interviews**

- 11.1 The Reviewer will identify the people that he wishes to interview and will ensure that sufficient notice is provided to allow those people to be made available.

## **12. Confidentiality**

- 12.1 All information, documents and other materials received or produced in the course of the review will be official information for the purposes of the Official Information Act 1982, and for the purposes of that Act the Reviewer will be acting as WorkSafe's agent.
- 12.2 The Reviewer must ensure the confidentiality of all official information that he has access to during the review. This includes the implementation of reasonable security measures to ensure the information is not inadvertently disclosed. All official information must be destroyed or returned to WorkSafe, at WorkSafe's request, at the conclusion of the review.
- 12.3 WorkSafe may choose to publish the review's deliverables and the Reviewer must therefore ensure that the deliverables do not include information that is covered by legal professional privilege. Where the Reviewer is unsure if legal professional privilege applies, he may request a determination of such from the Head of High Hazards, Energy and Public Safety in consultation with the Chief Legal Advisor.

## **13. Remuneration & Expenses**

- 13.1 The Reviewer will be reimbursed expenses incurred in the course of the review and in accordance with the terms of the signed contract for services between the Reviewer and WorkSafe. The Reviewer must lodge the appropriate forms with WorkSafe before reimbursements can be processed, including receipts for all expenses claimed.

## **14. Conflicts of Interest**

- 14.1 The Reviewer is subject to the WorkSafe policies and procedures regarding conflicts of interest (copy provided). The Reviewer must disclose all potential conflicts of interest, which include positions and pecuniary interests in businesses and partnerships that may be relevant to the review, as soon as is practicable.
- 14.2 All disclosures of conflicts are to be recorded in a register. The Head of High Hazards, Energy and Public Safety will decide how any conflicts are to be managed.

## **Version History**

<b>Date</b>	<b>Version</b>	<b>Author</b>	<b>Description of change</b>
14/7/21	0.1	Darren Handforth	Initial draft
16/7/21	0.2	Darren Handforth	Feedback incorporated from Lisa Nickson, Principal Legal Advisor Corporate
16/7/21	0.3	Darren Handforth	Feedback incorporated from Lisa Nickson, Rosemary Slatter and Rachel Carne
23/7/21	0.4	Darren Handforth	Feedback incorporated from reviewer Tim Smith
27/7/21	0.5	Darren Handforth	Feedback incorporated from Lisa Nickson, Braden Sloper and Phil Parkes.
29/7/21	0.6	Darren Handforth	Feedback incorporated from Lisa Nickson



























































## Annexure 3 - Factual Narrative

This factual narrative provides a timeline, data analysis and narrative of compliance certificates (**Certificates**) granted and notifications of refusal (**Refusals**) to issue compliance certificates by Compliance Certifiers (**Certifiers**) for the calendar years 2017 to 2020.

### Certificates Granted

Certificates granted by Certifiers are recorded directly by Certifiers in WorkSafe’s Compliance Certificates Register (**Register**). The Register was established on 1 December 2017 as a legislative requirement of the Health and Safety at Work (Hazardous Substances) Regulations 2017 (**Regulations**). The data provided in this report relating to Certificates granted by Certifiers was obtained from the Register.

The number of Certificates granted for each calendar year from 2017 to 2020 are provided in Appendix 1 by compliance certification company (**Company**) and Appendix 2 by Certifier. Between 1 December 2017 and 31 December 2020, a total of 56,087 Certificates have been granted by 86 Certifiers. The number of Certificates granted continued to increase each year (by about 1000), with 19,410 granted in 2020. Of the 56,087 total Certificates, 30,010 (53%) were granted by just ten Certifiers (**top ten Certifiers**). Figure 1 shows the total number of Certificates granted and the total number of Refusals notified for the top ten Certifiers between 2017 and 2020.

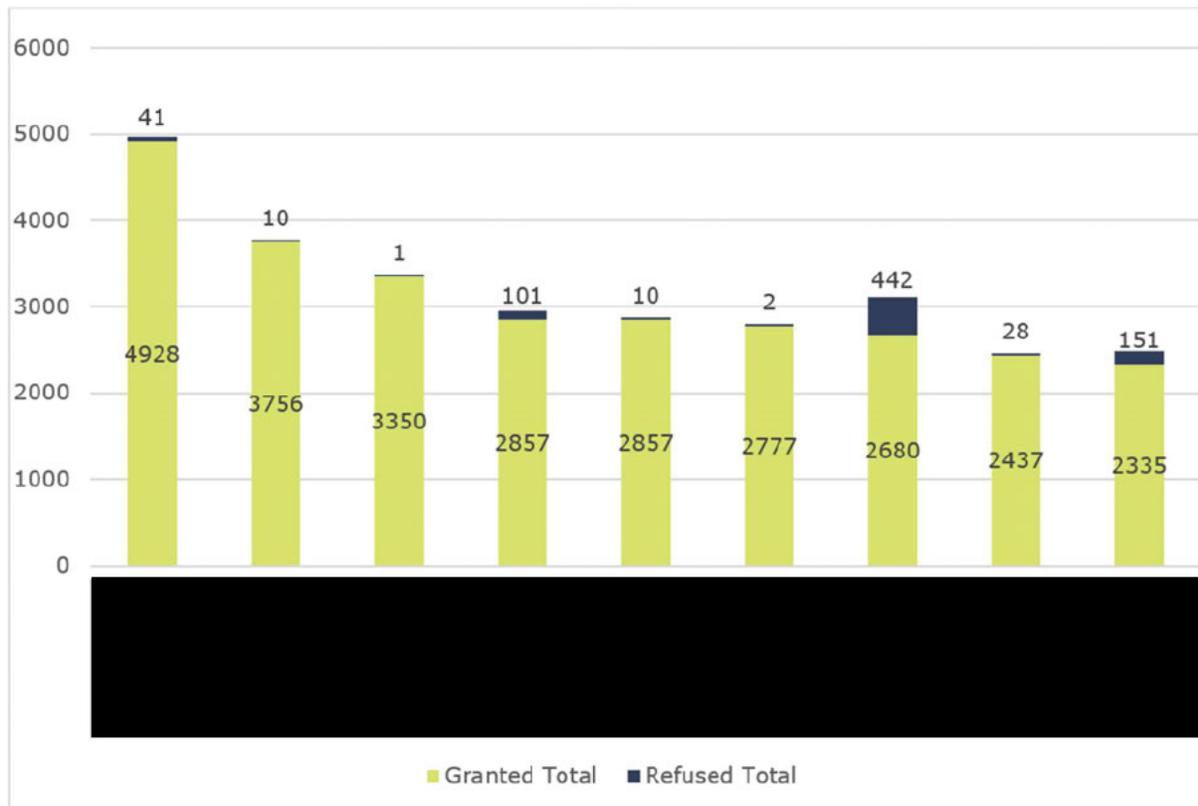


Figure 1. Total number of Certificates granted and Refusals notified for the top ten Certifiers between 2017 and 2020.

Of the 56,087 total Certificates, 38,277 (68%) were granted by just ten Companies (**top ten companies**). Figure 2 shows the total number of Certificates granted and the total number of Refusals notified for the top ten Companies between 2017 and 2020. [REDACTED] granted the most Certificates (8,137 or 14% of the total) of all Companies between 2017 and 2020.

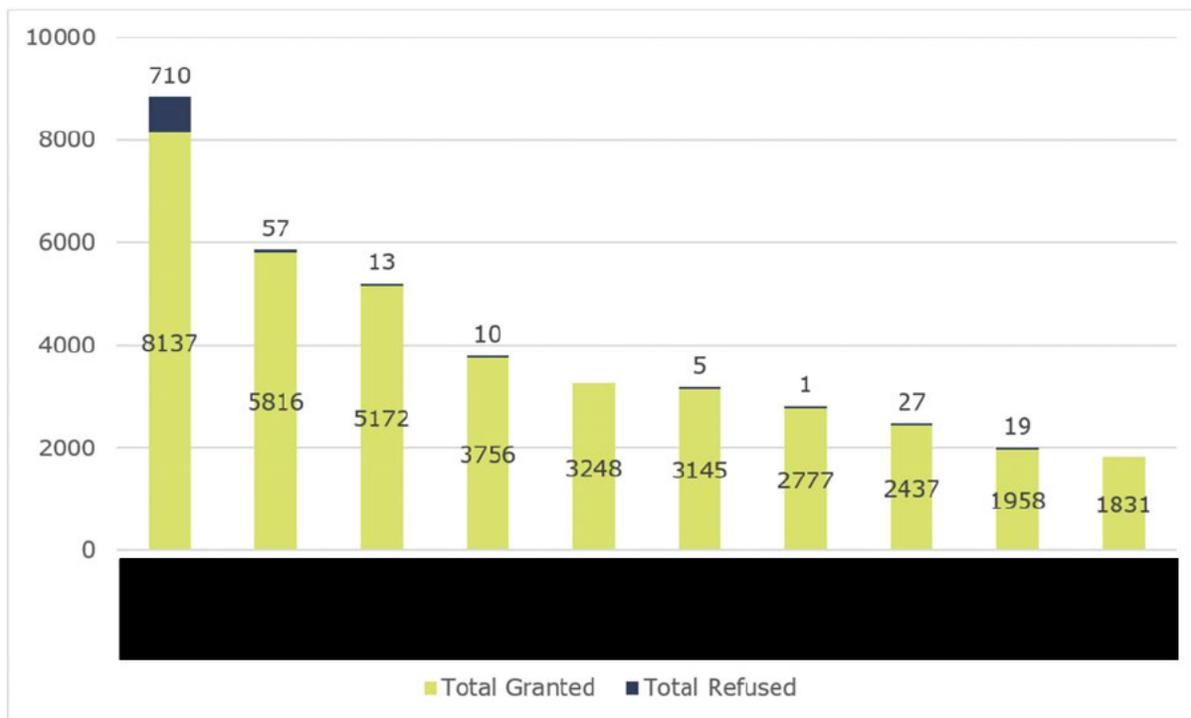


Figure 2. Total number of Certificates granted and Refusals notified for the top ten Companies between 2017 and 2020.

### Refusals Notified

Refusals to issue compliance certificates are recorded by WorkSafe in the Guardian case management system (**Guardian**). Refusals are made by Certifiers to WorkSafe in several different ways. The most common (and WorkSafe's preferred) method is for Certifiers to complete a refusal notification form from WorkSafe's website (**Standard Form**) and email a copy to WorkSafe. This notification is then processed by the Customer Operational Servicing Team (**COS Team**) and entered as a *Response file* in Guardian. Certifiers may also notify WorkSafe by emailing or phoning a WorkSafe Inspector directly. In this case, an *Assessment file* may be created in Guardian, but there will be no *Response file* created.

The data provided in this report relating to refusals was obtained only from the *Response files* in Guardian where the *Matter Origin* is recorded as *HSNO: Refusal to issue a test certificate*. Refusals notified by other methods than the Standard Form are not included in the data, as those *Assessment files* relating to refusals are difficult to distinguish from all other *Assessment files* in Guardian.

The number of Refusals notified for each calendar year from 2017 to 2020 are provided in Appendix 1 by Company and Appendix 2 by Certifier. Between 1 December 2017 and 31 December 2020, a total of 1,018 Refusals have been notified by Certifiers. The total number of Refusals between 2017 and 2020 represents just under 2% of the number of Certificates granted.

Of the 1,081 total Refusals, 789 (73%) were notified by the top ten Certifiers (Figure 1), and 842 (83%) were notified by the top ten Companies (Figure 2). [REDACTED] notified the most Refusals (710 or 70% of the total) of all Companies between 2017 and 2020. The number of Refusals has varied over time but increased sharply (by almost 200) in 2020, with 432 Refusals notified compared to 238 in 2019. This sharp increase is entirely attributed to the increase in Refusals from [REDACTED], who notified 122 Refusals in 2019 and 375 in 2020 (see Appendix 1). [REDACTED]

There are a range of reasons cited by Certifiers for Refusals. These are recorded by WorkSafe staff in the *Matter Description field* in the *Response file* in Guardian. Of the 1018 Refusals, 638 (63%) did not have a reason specified in the *Matter Description field*. While the reasons for those Refusals may be contained within the original notification forms, it was not compiled or analysed as part of this review. For the 380 (37%) Refusals where the reason for refusal was specified, an analysis was undertaken to determine the

most cited reasons. This analysis was based on a key-word search of the free-text *Matter Description* field.

The most cited reasons for Refusals are provided in Table 1. For the 380 Refusals where the reason for refusal was specified, 226 (59%) required updating and providing a copy of the site plan, 177 (47%) required records of staff training to be provided, 136 (36%) required the emergency response plan to be updated or evidence to be provided that an emergency exercise had been undertaken, 123 (32%) required appropriate signage to be installed, and 116 (31%) required an updated record of the hazardous substances inventory to be provided. The Refusals often cited more than one reason for the Refusal.

Table 1. Most cited reasons for Refusals notified.

Refusal Reason	Refusal Frequency	Details
Blank/unknown	638	No conditions entered, or reason not specified in Guardian
Site plan	226	Update or provide a copy of the site plan
Staff training	177	Provide records to demonstrate staff training
Emergency response plan/exercise	136	Update or provide a copy of the emergency response plan, or provide evidence that an emergency exercise has been undertaken
Signage	123	Install appropriate signage
Inventory	116	Provide an updated record of hazardous substance inventory
Fire extinguisher	72	Ensure fire extinguishers are installed in designated areas
Separation distance	44	Ensure separation distance requirements are met, or included on the site plan
Electrical certificate	39	Obtain an electrical certificate
Secondary containment	39	Ensure secondary containment requirements are met
MSDS	36	Update and provide copies of Material Safety Data Sheets
PPE	30	Ensure adequate PPE is available, and that staff are trained in how to use it
Approved Handler	18	Ensure the site has an approved handler
Stock reconciliation	4	Provide records of fuel reconciliation

### Conditional Certificates

Where compliance certifiers making an assessment for a location certificate identify minor non-compliances, the regulations include a provision that allows for a conditional compliance certificate (**Conditional Certificate**) to be granted. The Conditional Certificate provides the PCBU three months to address the non-compliance before either being granted a full Certificate or being refused a Certificate. Conditional Certificates can only be granted for location certificates. It is important to consider the number of Conditional Certificates granted in conjunction with the number of Refusals.

The total number of Conditional Certificates granted between 2017 and 2020 are provided in Appendix 1 by Company and Appendix 2 by Certifier. Of the total of 56,087 Certificates granted between 1 December 2017 and 31 December 2020, 7,840 (14%) were Conditional Certificates. Of the 7,840 Conditional Certificates granted, 6,372 (81%) were granted by the top ten Certifiers and 6,905 (88%) were granted by the top ten Companies.

Figure 3 shows the percentage of location certificates that were granted as Conditional Certificates for the top ten Certifiers. Four of those Certifiers granted more than 50% of location certificates as Conditional Certificates.

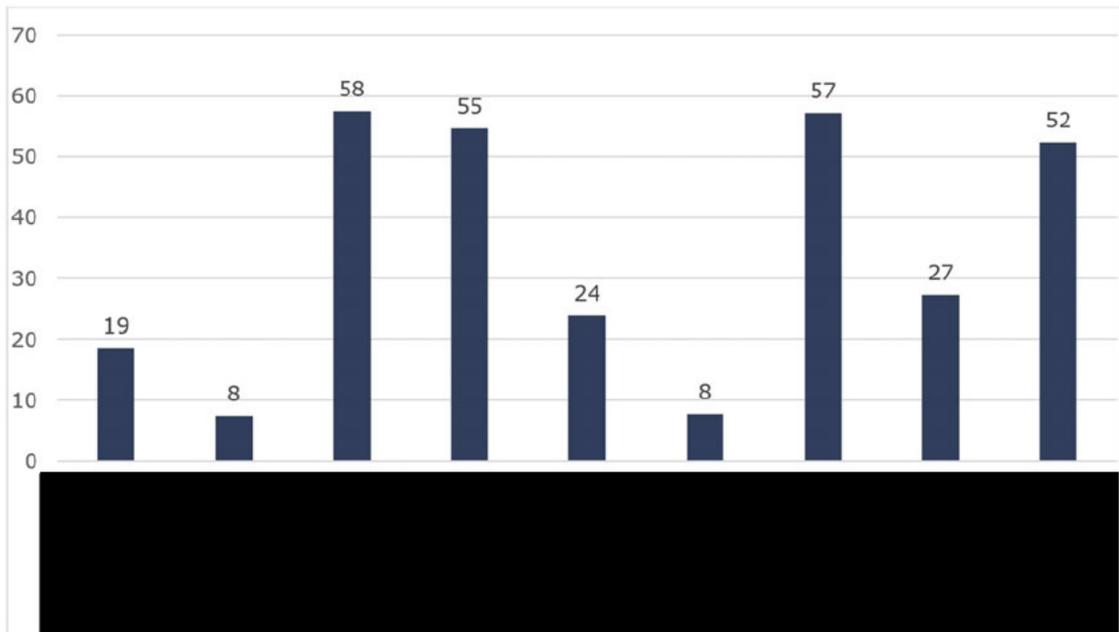


Figure 3. Percentage of location certificates that were granted as Conditional Certificates for the top ten Certifiers.

Figure 4 shows the percentage of location certificates that were granted as Conditional Certificates for the top ten Companies. One Company █████ granted 49% of location certificates as Conditional Certificates. As with Refusals, the percentage of location certificates granted as Conditional Certificates for █████ significantly increased in 2020 to 72%, from 57% in 2019 and 41% in 2018. █████

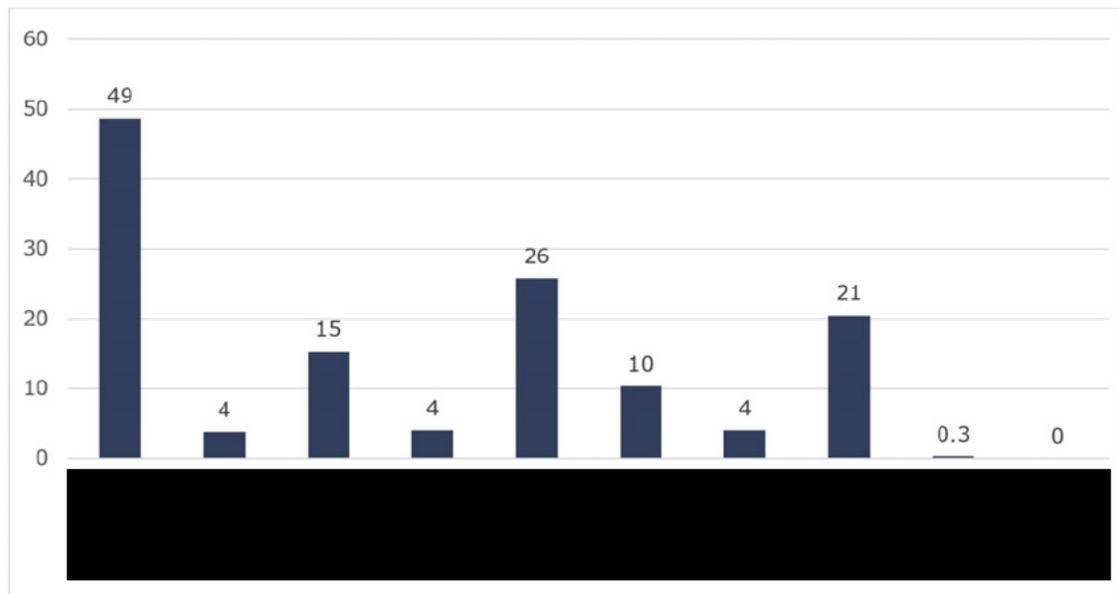


Figure 4. Percentage of location certificates that were granted as Conditional Certificates for the top ten Companies.

There are a range of conditions cited by Certifiers when granting Conditional Certificates. These are recorded by Certifiers directly in the *Conditional Compliance Certificate Terms* field in the Register.

Of the 7840 Conditional Certificates granted, only 57 (1%) did not have any conditions specified in the *Conditional Compliance Certificate Terms field*. For the 7,480 Conditional Certificates granted, an analysis was undertaken to determine the most cited conditions. This analysis was based on a key-word search of the free-text *Conditional Compliance Certificate Terms field*.

The most cited conditions for Conditional Certificates are provided in Table 2. For the 7,840 Conditional Certificates, 3,921 (50%) required updating and providing a copy of the site plan, 3,146 (40%) required records of staff training to be provided, 2005 (26%) required the emergency response plan to be updated or evidence to be provided that an emergency exercise had been undertaken, 1113 (14%) required appropriate signage to be installed, and 704 (9%) required an updated record of the hazardous substances inventory to be provided. The Conditional Certificates often cited more than one condition on the Certificate.

Table 2. Most cited conditions on Conditional Certificates.

Condition	Condition Frequency	Details
Site plan	3921	Update or provide a copy of the site plan
Staff training	3146	Provide records to demonstrate staff training
Emergency response plan/exercise	2005	Update or provide a copy of the emergency response plan, or provide evidence that an emergency exercise has been undertaken
Signage	1113	Install appropriate signage
Inventory	704	Provide an updated record of hazardous substance inventory
Other	460	Range of other conditions
Fire extinguisher	451	Ensure fire extinguishers are installed in designated areas
Separation distance	412	Ensure separation distance requirements are met, or included on the site plan
Electrical certificate	208	Obtain an electrical certificate
PPE	155	Ensure adequate PPE is available, and that staff are trained in how to use it
MSDS	68	Update and provide copies of Material Safety Data Sheets
Blank/unknown	57	No conditions entered, or reason not specified in Guardian
Covid	42	Conditional on a site assessment being undertaken post COVID lockdown
Stock reconciliation	25	Provide records of fuel reconciliation
Secondary containment	14	Ensure secondary containment requirements are met
Approved Handler	10	Ensure the site has an approved handler

## Certificate Types

There are 18 different Certificate types that have been granted under the Hazardous Substances Regulations since December 2017. Certifiers may only grant Certificate types that they are authorised to grant. For some specialised Certificate types, there are only a small number of Certifiers with authorisation to grant those Certificates. The most common types of Certificates to be sought or granted are location certificates, certified handler certificates and stationary container system certificates.

Not all Certificate types generate Refusals. Where refusal to grant a Certificate does not result in a non-compliance from the PCBU, a Refusal notification is not required. For example, where an applicant has failed to meet the regulatory requirements to be granted an approved filler certificate, there is no non-compliance, only that the applicant is not (and never has been) authorised to fill gas cylinders.

The time taken for a Certifier to assess an application for a Certificate also varies depending on the Certificate type. It is important to consider the types of Certificates granted in conjunction with the total number of Certificates granted, and the number of Refusals.

The types of Certificates granted between 2017 and 2020 are provided in Appendix 3 by Company and Appendix 4 by Certifier. Figure 5 shows the total number of Certificates granted by Certificate type between 2017 and 2020. Of the total of 56,087 Certificates granted between 1 December 2017 and 31 December 2020, 27,682 (49%) were location certificates, 9,092 (16%) were certified handler certificates, and 8,265 (15%) were stationary container systems certificates.

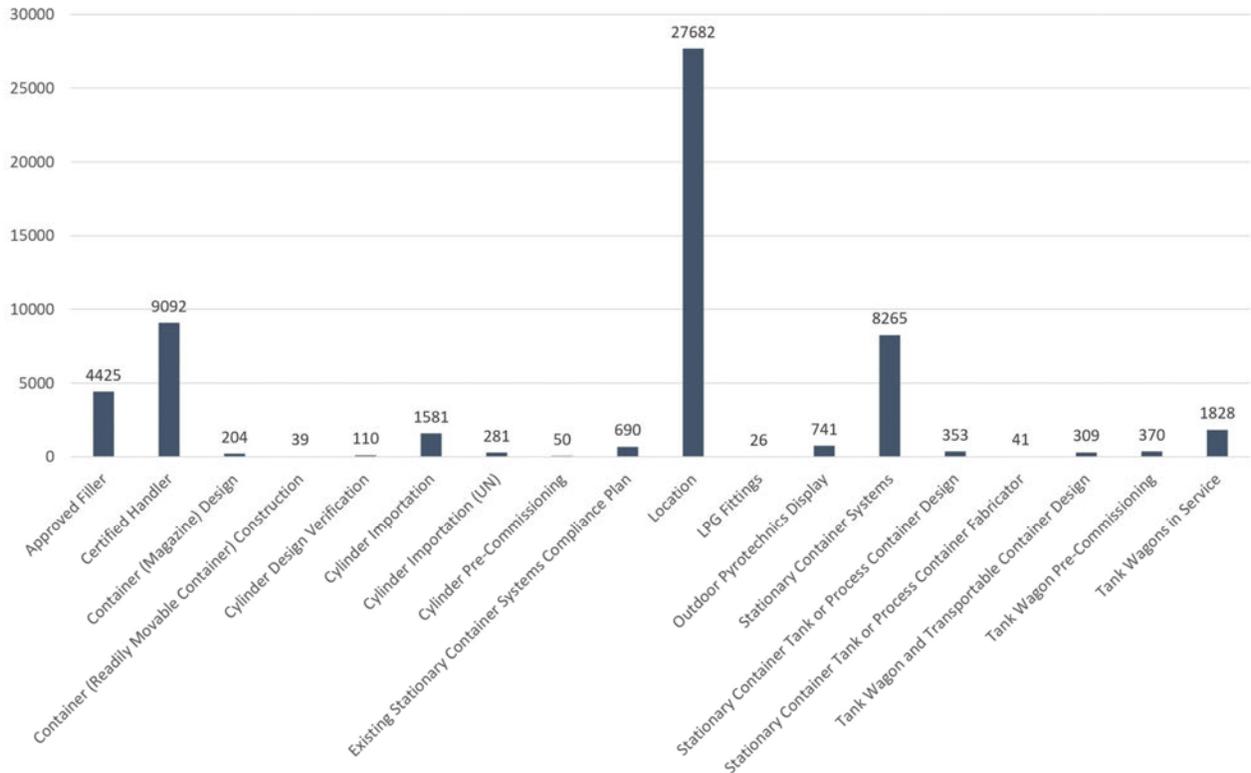


Figure 5. Total number of Certificates granted by Certificate type between 2017 and 2020.

The types of Certificates granted between 2017 and 2020 are shown in Table 3 for the top ten Certifiers. The top Certifier granted much greater numbers of certified handler certificates, cylinder importation certificates and outdoor pyrotechnics display certificates than any other Certifier, and much lower numbers of location certificates and stationary container certificates than the other top ten Certifiers. The third highest Certifier granted a much greater number of approved filler certificates than any other Certifier.

Table 3. Types of Certificates granted between 2017 and 2020 by the top ten Certifiers.

Compliance Certifier	Approved Filler	Certified Handler	Container (Magazine) Design	Cylinder Importation	Cylinder Importation (UN)	Cylinder Pre-Commissioning	Existing Stationary Container Systems Compliance Plan	Location	LPG Fittings	Outdoor Pyrotechnics Display	Stationary Container Systems	Tank Wagon Pre-Commissioning	Tank Wagons in Service
	72	2384	60	841	36	34		904	16	450	131		
		902					4	1998			852		
	1456	7						1523			364		
		86					4	2683			84		
	18	89						1445			1178	9	118
		53					13	1440			1267		4
		245					1	2234			200		
							1	1830			536	7	63
		28					25	1971			311		
							2	1669			559		

The types of Certificates granted between 2017 and 2020 are shown in Table 4 for the top ten Companies. The top Company granted a much greater number of location certificates than any other Company. The second highest Company granted much higher numbers of certified handler certificates, cylinder importation certificates and outdoor pyrotechnics display certificates than any other Certifier, and lower numbers of location certificates and stationary container certificates than almost all of the other top ten Companies.

Table 4. Types of Certificates granted between 2017 and 2020 by the top ten Companies.

Compliance Certifier	Approved Filler	Certified Handler	Container (Magazine) Design	Cylinder Importation	Cylinder Importation (UN)	Cylinder Pre-Commissioning	Existing Stationary Container Systems Compliance Plan	Location	LPG Fittings	Outdoor Pyrotechnics Display	Stationary Container Systems	Tank Wagon and Transportable Container Design	Tank Wagon Pre-Commissioning	Tank Wagons in Service
		359					30	7136			608		1	3
	107	2444	60	1219	53	34		1162	19	452	258		5	3
	18	89					2	3159			1777		9	118
		902					4	1998			852			
	1455	7						1437			349			
	306	115		345	89	16	13	1535			623		13	90
		53					13	1440			1267			4
							1	1830			536		7	63
		111						1360			218	35	22	247
								766	7		85		137	725

Appendix 1. Certificates granted and Refusals notified by Company each year between 2017 and 2020, and the total number of Conditional Certificates granted in 2017-2020 (sorted by Granted Total).

Company	Granted 2017	Refused 2017	Granted 2018	Refused 2018	Granted 2019	Refused 2019	Granted 2020	Refused 2020	Granted Total	Refused Total	Conditional Total
	84	21	3002	192	2698	122	2353	375	8137	710	3965
	87	2	1492	15	1702	34	2535	6	5816	57	220
	4	2	1393	8	1418	3	2357		5172	13	791
	45	1	1108	5	1134	4	1469		3756	10	151
			606		1477		1165		3248		836
	45	2	995	2	1144	1	961		3145	5	324
	9		1359	1	671		738		2777	1	112
	16		827	3	800	9	794	15	2437	27	500
	36		615	7	511	7	796	5	1958	19	6
	30		874		899		28		1831		
	2		554		539		458		1553		4
	7		505		413		437		1362		1
			279	1	565	2	501	1	1345	4	88
			404	4	339	1	364		1107	5	15
	15	2	259	12	323	17	379	12	976	43	339
					113		778		891		
	5		262	1	222	1	305	1	794	3	
	9	16	141	32	305	27	283	12	738	87	30
	15		199		228	3	204		646	3	3
			163		197		193		553		
	1		78		268	2	205	1	552	3	27

13		194		138		170		515		93
11		152		142		162		467		
5		183		142		107		437		
3		129	1	132		140	2	404	3	6
49	1	139	3	182				370	4	12
2		52	2	127		186		367	2	31
54		309	1					363	1	52
2	2	120	1	119		113		354	3	4
57		257						314		21
				123		186		309		
2		116		95		94		307		
22		116		86		65	1	289	1	
25		79		83		91		278		
		56		130	1	88		274	1	16
		87		93		69		249		18
		56		75		89		220		
		170		15				185		
		59		66		48		173		
				49		112		161		87
		26		113		14		153		
		35	1	42		76		153	1	88
1		38		47		36		122		
		11		26		57		94		
		62		28				90		
		38		30		19		87		
		29		31		6		66		
1		25		24		13		63		
		16		32		12		60		

			27		19		10		56		
			8		18		24		50		
					7		42		49		
			15		31				46		
							42		42		
					14		7		21		
			4		16		1		21		
6			9						15		
					1		11		12		
					8		4		12		
			9						9		
							9		9		
			7	2		2	1		8	4	
			7						7		
			4						4		
							2		2		
			2						2		
			1		1				2		
							1		1		
1	1								1	1	
	1									1	
								1		1	
				3		2				5	
<b>Total</b>	<b>664</b>	<b>51</b>	<b>17762</b>	<b>297</b>	<b>18251</b>	<b>238</b>	<b>19410</b>	<b>432</b>	<b>56087</b>	<b>1018</b>	<b>7840</b>

Appendix 2. Certificates granted and Refusals notified by Certifier each year between 2017 and 2020, and the total number of Conditional Certificates granted in 2017-2020 (sorted by Granted Total).

Compliance Certifier	Company	Granted 2017	Refused 2017	Granted 2018	Refused 2018	Granted 2019	Refused 2019	Granted 2020	Refused 2020	Granted Total	Refused Total	Conditional Total
		54	1	1067	8	1272	26	2535	6	4928	41	168
		45	1	1108	5	1134	4	1469		3756	10	151
		5		703	1	1477		1165		3350	1	877
		31	3	1227	44	1123	26	476	28	2857	101	1468
		2	2	869	7	807	1	1179		2857	10	345
		9		1359	1	671		738	1	2777	2	112
		24	13	830	61	598	66	1228	302	2680	442	1280
		16	1	827	3	800	9	794	15	2437	28	500
		29	3	945	85	977	30	384	33	2335	151	1033
		2		524	1	611	2	1093		2230	3	438
		30		874	3	899	2	115	8	1918	13	139
		36		615	7	511	7	394	4	1556	18	6
		2		554		539		458		1553		4
		21		392		520		614		1547		209
		7		505		413		437		1362		1
				279	1	565	2	501	1	1345	4	88
		14		417	2	356	1	347		1134	3	81
				338	4	296	1	336		970	5	14
						113		778		891		
		10		186		268		402	1	866	1	34
		5		262	1	199	1	253	1	719	3	
		15		199		228	3	204		646	3	3
		3	7	19	16	305	27	283	12	610	62	29
				163		197		193		553		
		1		78		268	2	205	1	552	3	27
		13		194		138		170		515		
		12		167	4	136	3	198	5	513	12	163
		11		152		142		162		467		
		33		355	1	62				450	1	45
			1	70	5	368	8			438	14	7
		5		183		142		107		437		
		3		129	1	132		137	2	401	3	6
		49	1	139	3	182				370	4	12
		2		52	2	127		186		367	2	31
				15		154		186		355		
		2	2	120	1	119		113		354	3	4
		57		257						314		21
		2		116		95		94		307		

	22		116		86		65	1	289	1	
	3		68	8	125	9	87	5	283	22	111
	25		79		83		91		278		
			56		130	1	88		274	1	16
	49		212						261		11
			87		93		69		249		18
			56		75		89		220		
			170		15				185		
			21		62	5	94	2	177	7	65
			59		66		48		173		
					49		112		161		87
			35	1	42		76		153	1	88
			26		113		14		153		
			62		35		42		139		
			66		43		28		137		1
	6	9	122	15					128	24	1
	1		38		47		36		122		
					14		99		113		80
			11		26		57		94		
			38		30		19		87		
							85		85		8
					23		61		84		
			29		31		6		66		
	1		25		24		13		63		
			16		32		12		60		
			27		18		7		52		
			8		18		24		50		
							48	3	48	3	36
							42		42		
			4		16		1		21		
		2					21		21	2	17
							17		17		5
	6		9						15		
					8		4		12		
					1		11		12		
			9						9		
			7	2		2	1		8	4	
			7						7		
					1		3		4		
			4						4		
			3						3		
							3		3		
			2						2		
			1		1				2		
							1		1		

		1	1						1	1	
								1	1		
								1	1		
					1					1	
					1					1	
								1		1	
					1					1	
			2							2	
			2							2	
					1					1	
<b>Total</b>		<b>664</b>	<b>51</b>	<b>17762</b>	<b>297</b>	<b>18251</b>	<b>238</b>	<b>19410</b>	<b>432</b>	<b>56087</b>	<b>1018</b>

Appendix 3. Certificate types granted by Company between 2017 and 2020 (Sorted by Granted Total).

Company	Approved Filler	Certified Handler	Container (Magazine) Design	Container (Readily Movable Container) Construction	Cylinder Design Verification	Cylinder Importation	Cylinder Importation (UN)	Cylinder Pre-Commissioning	Existing Stationary Container Systems Compliance Plan	Location	LPG Fittings	Outdoor Pyrotechnics Display	Stationary Container Systems	Stationary Container Tank or Process Container Design	Stationary Container Tank or Process Container Fabricator	Tank Wagon and Transportable Container Design	Tank Wagon Pre-Commissioning	Tank Wagons in Service	Granted Total
		359							30	7136			608				1	3	8137
107		2444	60			1219	53	34		1162	19	452	258				5	3	5816
18		89							2	3159			1777				9	118	5172
		902							4	1998			852						3756
1455		7								1437			349						3248
306		115				345	89	16	13	1535			623				13	90	3145
		53							13	1440			1267					4	2777
									1	1830			536				7	63	2437
		111								1360			218				22	247	1958
										766	7		85	76		35	137	725	1831
		735	3	15					1	733			66						1553
		545	138	24						655									1362
		1023								271			51						1345
		115							151	383			458						1107
		139								818			19						976
891																			891
									6				194	196	40	76	79	203	794
33		496							4	156			47	2					738
									1	463			182						646
553																			553
									390	63			93	6					552
515																			515
						110								67	1	197	92		467
		437																	437
										244			160						404
										251			119						370
		7							69	206			85						367
1										229			125				4	4	363
										326			28						354
41										261								12	314
																		309	309
		307																	307
		97										192							289



Appendix 4. Certificate types granted by Certifier between 2017 and 2020 (sorted by Granted Total).

Compliance Certifier	Company	Approved Filler	Certified Handler	Container (Magazine) Design	Container (Readily Movable Container) Construction	Cylinder Design Verification	Cylinder Importation	Cylinder Importation (UN)	Cylinder Pre-Commissioning	Existing Stationary Container Systems Compliance Plan	Location	LPG Fittings	Outdoor Pyrotechnics Display	Stationary Container Systems	Stationary Container Tank or Process Container Design	Stationary Container Tank or Process Container Fabricator	Tank Wagon and Transportable Container Design	Tank Wagon Pre-Commissioning	Tank Wagons in Service	Granted Total
		72	2384	60			841	36	34		904	16	450	131						4928
			902							4	1998			852						3756
		1456	7								1523			364						3350
			86							4	2683			84						2857
		18	89								1445			1178				9	118	2857
			53							13	1440			1267					4	2777
			245							1	2234			200						2680
										1	1830			536				7	63	2437
			28							25	1971			311						2335
										2	1669			559						2230
											836	7		98	76		35	138	728	1918
			111								1244			201						1556
			735	3	15					1	733			66						1553
			83				69	39		13	915			428						1547
			545	138	24						655									1362
			1023								271			51						1345
		306	32				276	50	16		403			51						1134
			24							151	337			458						970
		891																		891
											333			161				35	337	866

								6				172	180	39	77	78	167	719
								1	463			182						646
33	413							4	115			43	2					610
553																		553
								390	63			93	6					552
515																		515
	82								431									513
				110									67	1	197	92		467
35	60								215	3	2	127				5	3	450
					378	17			43									438
	437																	437
									242			159						401
									251			119						370
	7							69	206			85						367
																	355	355
									326			28						354
41									261								12	314
	307																	307
	97										192							289
	54								210			19						283
278																		278
	183								91									274
									143			110				4	4	261
								5	191			53						249
	137										83							220

					17				159			9					185	
									177								177	
	173																173	
6									155								161	
	14								139								153	
	153																153	
						139											139	
	91								46								137	
	83								41			4					128	
122																	122	
									113								113	
	94																94	
87																	87	
									45			40					85	
												22	22	1		2	37	84
	49								17								66	
	63																63	
1	59																60	
	52																52	
	29	3							18								50	
									48								48	
	42																42	
	21																21	
									21								21	
									17								17	
	1										14						15	

	12																		12	
	12																		12	
									9										9	
	8																		8	
7																			7	
	4																		4	
4																			4	
	3																		3	
									2			1							3	
	2																		2	
	2																		2	
												1							1	
												1							1	
												1							1	
	1																		1	
<b>Total</b>		<b>4425</b>	<b>9092</b>	<b>204</b>	<b>39</b>	<b>110</b>	<b>1581</b>	<b>281</b>	<b>50</b>	<b>690</b>	<b>27682</b>	<b>26</b>	<b>741</b>	<b>8265</b>	<b>353</b>	<b>41</b>	<b>309</b>	<b>370</b>	<b>1828</b>	<b>56087</b>

## **Annexure 4 – List of those interviewed**

Kim Comben, Manager Hazardous Industries, WorkSafe NZ

Simon Buckland, Principal Advisor Hazardous Industries, WorkSafe NZ

Brian Prince, Senior Advisor Hazardous Industries (Certifications), WorkSafe NZ

Christoph Hasenoehrl, Advisor Hazardous Industries (Certifications), WorkSafe NZ

Anne Forsyth, Team Leader Technical Specialists (Hazardous Substances), WorkSafe NZ

Lyn Osmer, Inspector Hazardous Industries Inspections, WorkSafe NZ

Andy Smith, Principal Advisor Regulatory Assurance, WorkSafe NZ

Peter Nicholls, Principal Advisor Regulatory Assurance, WorkSafe NZ

Mark Donaghue, General Inspectorate Manager Wellington & Wairarapa, WorkSafe NZ

Madan Chugh, Health and Safety Inspector II, WorkSafe NZ

