

Finger pointed back at WorkSafe in Whakaari Case

Kathy Spencer

The devastating volcanic eruption at Whakaari White Island on 9 December 2019 killed 22 people and left a further 25 people with serious injuries.

A year later, WorkSafe laid charges against 13 organisations and individuals for alleged health and safety violations in connection with the tragedy.

While these cases started to work their way through the court system, WorkSafe's own failings in carrying out its adventure activity responsibilities came to light.

The first of WorkSafe's responsibilities was to register adventure activity operators. This is important because an operator can't legally operate without being registered, and an operator can't be registered unless it has passed a safety audit.

However, at the time of the fatal eruption, only the boat tour operator, White Island Tours, was actually registered. Four companies offering flights to Whakaari were not.

The second area of responsibility was to develop safety standards for adventure activities, and approve safety auditors who would check that the standards were being met.

However, it's clear that the audits weren't fit for purpose in respect of tours to Whakaari. The audits should have considered how any serious risks to workers and tourists would be managed, but they didn't address the risk from volcanic activity.

According to Judge Evangelos Thomas: "This was an astonishing failure, contributed to by WorkSafe itself. It made the audits worthless."

The judge highlighted a similar eruption on the island that had occurred during the night in April 2016, noting that:

"What should then have been obvious to every Whakaari stakeholder was that any risk assessment and risk management processes in place had failed. They would not have prevented serious injury or loss of life had tours been operating on the island at the time."

It seems obvious that WorkSafe too, should have taken this eruption as a warning that the safety regime it administered wasn't adequate for the adventure activities on Whakaari.

The fact that the 2016 eruption happened when Whakaari was at its lowest volcanic alert level should have added even more urgency, and triggered rapid change, but it didn't.

Deaths and injuries from natural hazards like volcanic eruptions are sometimes portrayed as inevitable. For example, in one of its reports on the Whakaari disaster, MBIE says:

"Catastrophic events (with five or more fatalities) have historically occurred in the adventure tourism sector on an occasional basis. The Whakaari/White Island event suggests catastrophic events may continue to periodically occur in the sector, despite the adventure activities regime."

That would have been a fair observation had the safety regime been functioning as intended when the Whakaari eruption occurred.

However, clearly that wasn't the case: tour operators continued to be unregistered and the safety audit continued to be inadequate in respect of the volcanic activity risks.

Despite its own failings, WorkSafe was not shy in pointing the finger at others, laying a total of 19 charges carrying fines ranging up to \$1.5m.

White Island Tours, and four other tour operators, pleaded guilty to a total of 9 amended charges of failing to ensure the safety of workers and tourists. Whakaari Management Ltd – the company that licensed tours to the island – was convicted on one charge of failing to ensure a safe workplace.

WorkSafe's charge against the Institute of Geological and Nuclear Sciences (GNS), of failing to communicate volcanic risk to the public, was dismissed.

Judge Thomas also dismissed the charge against the National Emergency Management Agency (NEMA). He ruled that NEMA did not have a duty under the regime in relation to volcanic hazards on Whakaari, and he awarded NEMA \$40,000 in legal costs.

A second charge against Whakaari Management Ltd, of failing to keep workers safe, was dismissed, along with charges against the three owners of the company in their roles as directors.

Tauranga Tourism Services and ID Tours, who facilitated tours to the island, had charges of failing to provide tourists with safety information, dismissed.

Given his own organisation's failings, a comment made by the WorkSafe Chief Executive after the guilty plea by White Island Tours, is quite breathtaking:

"We hope the decision of White Island Tours will provide some assurance to the survivors and family and whānau of those who passed that those who had a duty to ensure their safety and failed to do so are being held to account."

And how has WorkSafe been held to account?

Following an independent review by David Laurensen KC in 2021, WorkSafe said that it:

"... accepts that there were significant shortcomings in our implementation and enforcement of the Adventure Activities Regulations in relation to adventure activities on Whakaari. We deeply regret that and are fully committed to improving our performance ..."

Somehow, I doubt this will provide much assurance to those who were so tragically affected by the disaster ... or to anyone who might want to rely on safety regulations in future.

Kathy Spencer was a Deputy Director-General in the Ministry of Health, a General Manager in ACC and a Tax Manager in the Treasury.