

Welcome to the 10<sup>th</sup> issue of *The Safe Side*! In this edition, we look at two recent convictions resulting (in part) from situations where workers did not have the appropriate training and competence to perform work safely. We also touch on safety around gates, performance indicators and officers' due diligence as well as news from the wider statutory liability world. If you would like to read any of the old issues of *The Safe Side*, they are available on our [website](#). And remember, you are welcome to share our *Safe Side* publications with anyone who might be interested in their contents.

– Jane Birdsall, Executive Manager, Health & Safety and Statutory Risk Claims & Consulting

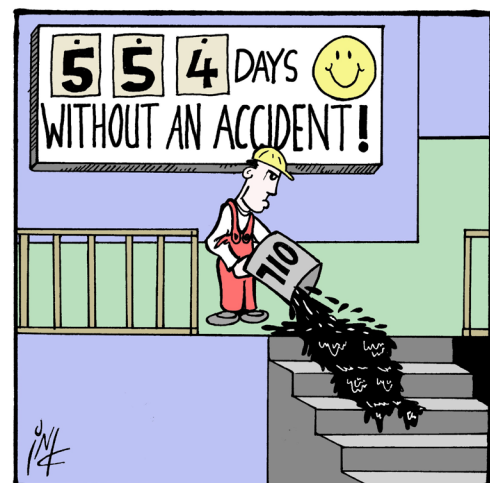
## Keeping an eye on health and safety performance from the Board table

One of the most significant changes in the Health and Safety at Work Act (HASWA) was the introduction of a positive duty of due diligence on a PCBU's officers. Board members and senior leaders must now exercise the care, diligence and skill that a "reasonable" officer would exercise to ensure their business complies with its duties and obligations under HASWA – including eliminating or minimising risks to workers and others so far as reasonably practicable.

One of the ways officers can ensure their business is meeting its duties is to require and consider meaningful indicators and metrics about health and safety performance. Lost time injury rates (LTIs) have historically been central to this process although it is now widely accepted that a broader range of measures is useful. Focussing on LTIs might drive perverse and unintended outcomes (e.g. under-reporting) and fail to provide sufficiently relevant, robust and timely information on the state of health and safety in a business.

The NZ Business Leaders' Health & Safety Forum has produced a useful [guide](#) for leaders on identifying critical health and safety reporting indicators. Safe Work Australia has also published

[guidance](#) about measuring and reporting on work health and safety to assist officers effectively meet their due diligence duties.



*"It's not that Ted was a bad guy, he was just all out of '5's'."*

## Community work for trimming trees next to powerlines

New Zealanders have a strong tradition of DIY. However, the recent [conviction](#) of a man under both HASWA and the Electricity Act highlights the importance of understanding how to avoid or reduce the risks involved in DIY work and always using competent workers to assist.

The defendant was the trustee of a family trust that owned a property and he managed and undertook the maintenance work. He regularly employed a part time casual worker to perform some of the work.

In the months prior to the incident, the defendant had received two cut and trim notices from Vector because the trees on the property were too close to powerlines. The notices gave a warning about the dangers of working close to the powerlines and recorded that only trained and approved arborists could undertake tree trimming near network lines.

The defendant employed the victim to assist with removing the lower branches of the trees. He intended to employ an arborist to remove the higher branches.

The Court heard that there was no record of a hazard assessment being undertaken before work began. Nor was there any reference to safety guidance on working at height or near [electrical lines](#). A metal rather than a fibreglass ladder was used for the tree trimming work.

When the victim cut the last branch of the day, it fell onto the powerlines. An electrical current was conducted through the branch to the ladder and then up the victim's right arm. The victim fell and sustained serious injuries.

The defendant was sentenced to 60 hours community work on the Electricity Act charge. He was also fined \$65,000 on the HASWA charge and ordered to pay regulator costs of \$21,476. Reparations of \$20,000 were ordered in addition to the \$4,200 the defendant had already paid.

## Safety around automated and manual gates

Gates kill and injure people, and especially children, with tragic regularity. A UK company was recently [fined](#) £30,000 following the death of a six year old boy who was crushed under a gate when it came off its tracks. This followed the 2017 conviction of a gate installer who was jailed for [manslaughter](#) after a gate fell on and killed a woman in Norwich.

In New Zealand, there have been at least two fatalities involving gates and children, and a child was seriously injured when he became trapped in an automated gate in 2016.

If there is a gate on the premises, a business needs to assess whether it is as safe as reasonably practicable. Two important controls to have in place are effective end-stops so the gate cannot run off its tracks and sensors on the leading edge of automated gates to trigger a reversal when an obstruction is detected. A business should also set up a programme of inspection and maintenance to ensure the gate remains in a safe condition.

Information on gate safety is available from [WorkSafe](#), the [HSE](#) and the UK based charitable organisation [Gate Safe](#).

## Safety rules need to be adequately communicated, monitored and enforced

In June 2017, a worker was killed in the Marlborough Sounds when the 2-axle dump truck he was driving ran off the road and rolled down a bank. The deceased was not wearing his seatbelt; nor was he licensed to drive the vehicle. A Picton company was [convicted and sentenced](#) in May this year as a result of the death.

The defendant company had policies in place saying that vehicles could only be driven by workers with appropriate licenses and that seatbelts must be worn. But it admitted that it had failed to do all that was reasonably practicable to communicate, monitor and enforce the policies. The supervisor was present at the time of the incident and knew that the deceased was unlicensed. He took no action to prevent the deceased from driving.

The company was ordered to pay \$89,000 in reparations in addition to the \$26,000 it had already paid. In addition, \$59,354.66 was ordered in consequential losses together with \$3,380 for reimbursement of estate administration fees.

The Court adopted a starting point for the fine of \$625,000 – at the very low end of the high culpability range. After discounts for mitigating factors including remorse and payment of reparations, and a further 25% discount for an early guilty plea, a final fine of \$351,563 was imposed. Payment for regulator costs of \$3,500 was also ordered.

## Health, safety and other statutory liability news in brief

### Increase in funding for WorkSafe announced

The Minister announced an increase in funding for WorkSafe of \$57 million over four years. The money will include funding for education about mental health and carcinogens.

[Read more ►](#)

### UK company fined £1 million after two workers burned

An explosion led to significant burns for two workers after a flammable substance was used to clean a distillation tank.

[Read more ►](#)

### Supplying unsafe toy pigs results in \$45k fine

A NZ importer and wholesaler pleaded guilty to a charge under the Fair Trading Act of importing and supplying toys that represented a choking hazard to children under 36 months. The Commerce Commission commented that prosecuting these cases is a priority because they are about the safety of small children. [Read more ►](#)

### WorkSafe re-issues advice on staying safe around gas and electricity

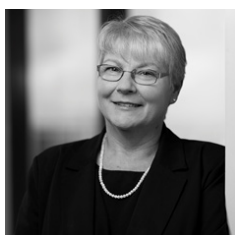
WorkSafe regulates electrical and gas safety in homes. Following the Christchurch explosion, it is promoting its advice about how to keep safe to the public. This includes advice on what to do if you smell gas. [Read more ►](#)

### Maritime NZ issues safety update on jet boat steering systems

Following a fatal jetboat accident, Maritime NZ advises that operators should check the condition of shackles and locking wire on pins in the steering system. [Read more ►](#)

### Companies fined for sediment contamination

Three companies were fined a total of \$103,330 after rivers were contaminated by sediment generated by blasting and tracking activities on a dry stock farm. [Read more ►](#)



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Jane has over 12 years' experience as a health, safety and environmental regulator. She has led many significant investigations into workplace accidents as both a manager and health and safety inspector with WorkSafe New Zealand. Jane is thoroughly familiar with current health and safety practice and works with colleagues, customers and others to assist with risk analysis and reduction of risk factors in this area.

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