

The Safe Side



Developments in health and safety from New Zealand and around the world

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The failure to comply with statutory obligations has led to criminal convictions for two individuals after their businesses were investigated for health and safety contraventions. In this issue, we cover these cases as well as two other prosecutions involving significant reparation orders and a recent machine guarding conviction. We also consider why involving workers is central to successful health and safety outcomes. As always, we hope the information helps to keep you on the Safe Side.

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

WorkSafe gets tough on individuals who fail to cooperate during investigations

Health and safety inspectors have very wide [powers](#). They include the ability to require corporate PCBUs to provide documents and information and to make statements. Two recent convictions sound a warning that WorkSafe will prosecute individuals when there is a serious failure to comply with these powers or cooperate during an investigation.

In May, a tree feller was [convicted](#) for obstructing an inspector after he failed to make a statement despite four requirements to do so. He also failed to provide documents and information. The man was fined \$2,000. The Court took into account his financial capacity when arriving at the level of the fine.

More recently, a farm company director was [sentenced](#) under the Crimes Act for wilfully attempting to obstruct, prevent, pervert or defeat the course of justice after he directed an injured worker to lie to WorkSafe inspectors. The offence carries a maximum penalty of seven years imprisonment.

The offending arose after a worker was injured on a wood splitter. The defendant visited the injured man in hospital and instructed him to say, amongst other things, that he was not actually working for the company when he was injured.

The worker made an initial statement to WorkSafe conveying this information but later admitted he had lied as he was concerned about the consequences if he told the truth.

At sentencing, the judge noted that the starting point for the offending would be one of imprisonment but in light of all the circumstances – including previous good character and the subsequent guilty plea – a sentence of four months' community detention was appropriate.

The role of statutory liability insurance

VL will appoint a specialist health and safety lawyer to protect an Insured's interests during an investigation. This includes providing advice on how best to interact with WorkSafe and respond to inspectors' powers and requirements.

It is important to understand, however, that statutory liability insurance policies generally exclude coverage for breaches and contraventions that arise from deliberate conduct. While every case will be considered on its facts, defence costs and penalties may not be indemnified if a person fails to cooperate with the lawful requirements of an inspector.

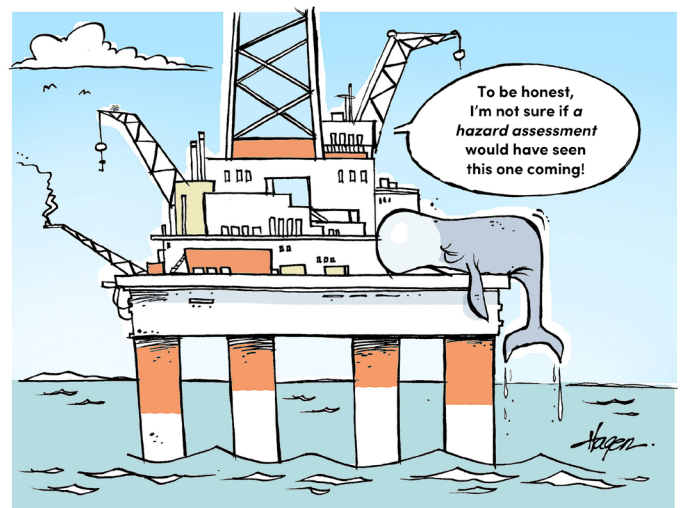
Workers are central to ensuring safety

Workers are the experts in the jobs that they do so it makes sense to involve them when thinking about how to make their work safer.

Involving workers is also a [legal obligation](#). The Health and Safety at Work Act (HASWA) requires PCBUs to engage with workers when, amongst other things, identifying hazards and assessing risks.

Workers can often provide practical suggestions for improvements along with valuable insights on whether proposed controls will really work in practice. And significantly, workers are more likely to "buy-in" to safety if they have a hand in managing it.

WorkSafe has produced extensive [guidance](#) on worker participation, engagement and representation and how to comply with the law.



Big reparation payments orders for severe life-changing injuries

Two recent sentencing decisions have seen the defendants pay a combined total of more than \$610,000 in reparations following convictions under HASWA. Reparations are insurable and these orders once again highlight why statutory liability insurance cover is so important for individuals and companies running a business.

The first prosecution resulted after a 19-year-old stable hand was given a race-fit thoroughbred to ride although she had limited riding experience. She lost control and was thrown from the horse. Her injuries resulted in tetraplegia.

The race horse trainer who employed the victim failed to assess her riding ability on more suitable horses. He was [convicted](#) of an offence under HASWA as an individual and fined \$30,000.

The Court also ordered him to pay a total of \$372,000 in reparations. This was made up of \$110,000 for emotional harm as well as \$262,000 for consequential loss to cover the

20% of the victim's wages that ACC would not compensate her for. The victim was reportedly on the minimum wage at the time of the accident.

In a second [conviction](#), a truck driver was thrown from a cherry-picker type work platform while he was unloading it from a truck. He was not wearing a safety harness and had not had adequate training on the need to wear one.

As a result of the accident, the 54-year-old driver sustained brain trauma, multiple broken ribs and a punctured lung, a severe wrist injury and paraplegia.

The Court ordered that \$138,300 be paid to the victim to compensate for the shortfall between his pre-accident earnings and the 80% that ACC would pay him until he was 65. An additional \$100,000 was ordered for emotional harm.

The defendant company was also fined \$304,750 and ordered to pay \$7,080 in costs.

Safety rules need to be adequately communicated, monitored and enforced

The requirement to adequately guard dangerous machines has been part of New Zealand law since at least 1950 when the Machinery Act was passed. Yet machinery accidents continue to kill and injure workers and cost businesses many thousands of dollars.

In a recent case, a [Hastings company](#) was fined \$367,500 and ordered to pay reparations of \$141,635 after a worker was drawn into a bottle filling machine while cleaning it. Sadly, the worker died at the scene.

The machine had been imported from China and there was no interlock in place to stop the dangerous moving parts when the guarding was removed for cleaning. Although the machinery had no certification, the defendant did not take steps to ascertain whether it was safe and compliant before it was put into use.

Businesses can seek advice from a [Chartered Professional Engineer \(CPEng\)](#) with specialist knowledge of machine guarding. A CPEng can verify the safety of old, modified or imported machinery and provide advice on compliance with machine safety standards. Although there is a cost for engaging a CPEng, there will likely be a much higher human, financial and reputational cost if someone is injured or killed by non-compliant machinery.

Health, safety and other statutory liability news in brief

Farmer sentenced for animal welfare offences

A Northland farmer received a two year ban from owning more than 70 cows after a prosecution by MPI for animal welfare offences. He was also fined \$5,000. [Read more ►](#)

Conviction and fine for bullying staff

A Melbourne director and his security company were fined a total of \$116,250 for bullying behaviour. [Read more ►](#)

Company fined \$180,000 for mislabelling food

Misleading customers over the country of origin for ham products resulted in a \$ 180,000 fine for a Bulls-based company. The Commerce Commission prosecuted under the Fair Trading Act after product labels gave a false impression that pork in small goods food products was from NZ reared pigs when, in fact, 87% of the meat was from imported products. [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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