

*This month we revisit the Pike River Mine disaster – an event which led to a massive shake up in health and safety regulation in New Zealand. We also look at the ongoing problem of serious injuries and deaths amongst new workers, the risks of working from home and a prosecution that could have been avoided by picking up the phone and calling WorkSafe. Finally, we cover the sentencing and record fine resulting from the Dreamworld prosecution in Australia.*

## Remembering the Pike River Mine tragedy ten years on

At 3.45pm on 19 November 2010, a massive explosion occurred deep within the Pike River Mine. Twenty-nine of the 31 men underground at the time never made it home. Their bodies remain in the mine.

The event was the catalyst for some of the biggest changes in New Zealand's work health and safety system in a generation. It led to the establishment of WorkSafe as a stand-alone regulator and the introduction of the Health and Safety at Work Act 2015 – with its greatly increased penalties, expanded duties and new due diligence provisions for directors.

A [Royal Commission](#) was set up to investigate the explosion. It concluded that the most likely source of fuel for the explosion was the large volume of methane in the cavity or "goaf" hollowed out after coal was extracted by hydro-mining. A roof fall in the goaf may have acted as a massive piston, pushing the concentrated methane out into the main ventilation system in the mine. Once there, the methane mixed with air until it reached the explosive range and was ignited.

The source of the ignition is unknown. Some possible mechanisms are a mine vehicle which became supercharged in the methane-rich atmosphere, a faulty piece of electrical equipment that wasn't properly maintained or inspected, or a miner having an illicit

cigarette. What is known is that once the methane was ignited, the explosion travelled through the mine's roadways. Those who were not killed by the thermal energy and shockwave were almost certainly killed by the toxic and oxygen deprived atmosphere created in its wake.

After an extensive investigation, Pike River Coal Ltd was [convicted](#) on nine charges under the Health and Safety in Employment Act 1992. Record fines were imposed on the company. Charges against the CEO and previous General and Mine Manager, Peter Whittall, were eventually withdrawn – an action the [Supreme Court](#) later declared unlawful.

The range of failures was sobering. The company was close to financial ruin and the push to produce coal delayed many safety improvements. Production became the key focus in an industry that has a long history of catastrophic loss of life.

The [Pike River Recovery Agency](#) was established to re-enter the mine and is now nearing the completion of its work. But most of the mine will remain unexplored because of a massive roof fall in the geological fault which runs between the stone access tunnel and the main workings of the mine. This is where the explosion originated and where most of the men were working. What really happened on 19 November 2010 is likely to remain forever unknown.

## Working from home introduces new risk to workers' health that must be managed

Working from home has become the new normal for many New Zealanders. While it means they can avoid the morning commute, it may also create risks to worker health that must be managed by a PCBU under HASWA.

One of the most obvious of these is a poorly set up workstation. Over time, this can lead to injuries like neck and back strain and carpal tunnel syndrome. And while it may not have been reasonably practicable for PCBUs to manage this risk to health during lockdowns, it is difficult to argue that this cannot be done now. WorkSafe has produced [a range of guidance](#) on how to set up a safe working environment at home.

Less obvious are the mental stressors that may result from COVID-19 in general and working at home in particular. WorkSafe has also collated resources from many sources around maintaining [mental health](#) and wellbeing during the pandemic.



## The recurring tragedy of harm to new workers

In November 2018, a trainee mechanic was on his second day on the job when the six tonne truck he was working on [rolled on top of him](#). His injuries included fractures to his ribs, pelvis and sternum, a punctured lung and nerve damage. His employer was convicted and fined \$20,000. The judge considered that the starting point would have been \$400,000 but arrived at \$20,000 after considering all other matters.

Just over a year earlier, a mother of seven was hit by a forklift and killed on her first day on the job. Her employer and a related company paid fines, reparations and costs of almost half a million dollars.

In 2016, a machine setter was seriously injured when changing the die on an unfamiliar machine. Although he had many years of experience in the industry, he had only

been in his new job for six days. His employer was [convicted](#), fined \$100,000 (reduced due to financial circumstances) and ordered to pay \$33,693 in reparations.

These three incidents highlight why extra care needs to be taken when new workers start at a workplace. Workers need to be given sufficient training and supervision to keep themselves safe. In [Issue 13](#) of the Safe Side, we covered some of the ways this can be done.

WorkSafe has also just released a [video](#) for businesses to use during their new starter induction process. It provides a high-level overview of worker's rights and responsibilities for health and safety. In addition, Site Safe has produced useful information on running a [workplace induction](#). While aimed at the construction industry, the approach and much of the information is applicable to all industries.

## Repeat offending attracts a large fine for a minor failure

A simple phone call to notify WorkSafe about a mini-crane collapse could have saved an Auckland company from a [\\$26,000 fine](#) and the additional costs of a health and safety prosecution. Under HASWA a notifiable incident is an unplanned or uncontrolled incident at a workplace that exposes workers, or any others, to serious risk. PCBUs have a duty to notify these incidents and failure to do so carries a maximum fine of \$50,000.

In this case, the compliance history of the company almost certainly influenced the decision to investigate and file

charges. The company had been issued with 28 prohibition notices, improvement notices, sustained compliance letters and directive letters before the incident.

Incidents that are deliberate or escalated because of repeat non-compliance may not always be covered by insurance. Brokers should ask about a company's compliance history to ensure all relevant information is disclosed to the underwriter at proposal and renewal.

## Record fine for Dreamworld deaths

A record [fine](#) of AUD\$3.6M has been handed down to Ardent Leisure Ltd, the company which owns and operates Dreamworld. The fine is the largest in the history of work health and safety prosecutions in Australia.

The company was convicted of three offences under Queensland's Work Health and Safety Act 2011 after the deaths of four patrons on the Thunder River Rapids ride. You can read more about the incident in [Issue 15](#) of the Safe Side.

In sentencing, Magistrate Pamela Dowse observed, "The defendant operated the most iconic amusement park in the country. It targeted and attracted families. Those who were at risk from its failures were guests at the park, including those guests who tragically lost their lives.

Complete and blind trust was placed in the defendant by every guest who rode the Thunder River Rapids Ride. Those guests were vulnerable."

"The failures of the defendant were not momentary and did not occur on the day of the incident. They were failures well before then, which led to what ultimately transpired. Nor were they confined to a discrete safety obligation."

"Whilst the defendant directed resources towards safety, and implemented some control measures and improvements over time, its efforts were grossly below the standard that was rightly expected of it. A variety of control measures were available to it, which would have minimised or eliminated the relevant risk."

*This newsletter is published as part of Vero Liability's commitment to supporting better work health and safety outcomes for all New Zealanders. We want everyone to go home safe.*

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