

# The Safe Side



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

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*The eruption of Whakaari/White Island just over a year ago was seen by many New Zealanders as a “natural” disaster. However, WorkSafe has now filed criminal charges against 13 parties involved in operations on the Island in what will likely be some of the most significant health and safety prosecutions in New Zealand’s history. We cover these developments in this issue. We also look at a massive fine for industrial manslaughter in Queensland and another big reparation payment in New Zealand – this time following a fatality in the forestry sector. In addition, we touch on the safe use of farm vehicles, the reduction in work fatality figures over the past year and, on a lighter note, introduce both the new Minister and WorkSafe’s fluffy animal safety mascots.*

## WorkSafe charges cast a wide net following the Whakaari/White Island eruption

WorkSafe has announced that it has filed charges against 13 separate parties in relation to the eruption on Whakaari/White Island on 9 December last year.

Twenty-two of the 47 people on the Island at the time of the eruption died. Scores of others were seriously injured.

The Chief Executive of WorkSafe, Phil Parkes, says the charges conclude the most extensive and complex investigation ever undertaken by WorkSafe.

WorkSafe has not named the parties charged but Radio New Zealand has reported that they include White Island Tours Ltd, helicopter tour operators Volcanic Air Safaris and the owners of the Island.

In addition, the [National Emergency Management Agency](#) (Civil Defence) and [GNS Science](#) have confirmed that they have been charged in relation to the eruption. GNS has a role in monitoring and sharing information about geohazards, including volcanoes. Civil Defence provides leadership in reducing risk, being ready for, responding to and recovering from emergencies.

WorkSafe says that 10 organisations were charged under the Health and Safety at Work Act 2015 (HASWA). Each charge carries a maximum fine of \$1.5 million.

Three individuals have also been charged under Section 44 which requires directors to exercise due diligence that the company is meeting its health and safety obligations. As we [reported](#) in January this year, charges against directors

are rare. This may signal a new willingness by WorkSafe to prosecute directors, although it remains to be seen whether it is only “working” directors in small companies who are vulnerable.

The number of parties charged underscores how extensive and far reaching the duties under HASWA are. It appears that WorkSafe is prosecuting PCBUs that were not operating on the Island at the time when the eruption took place and that had no direct contractual link to the victims.

The prosecutions also emphasise the importance of considering the potential for catastrophic outcomes when deciding on limits of indemnity. It is unknown if any or all parties will be convicted. However, if they are, the reparations for so many deaths and serious injuries are likely to run into the millions of dollars.

In hindsight, the unpredictability and potential devastation of eruptions occurring on the Island begs the question of whether it was ever safe for tourists to visit.

There has been no inquiry or investigation into WorkSafe’s role as a regulator of Adventure Activities or whether it met its duties under HASWA. At least one of the defendants had its Safety Management System audited (and passed) by a WorkSafe approved Adventure Activities auditor. This information was publicly available on WorkSafe’s *Register of adventure activity operators* at the time of the eruption.

## Work fatalities on track to an all-time low in 2020

Our lockdowns have been hard on all New Zealanders – but there may have been some unexpected benefits for health and safety. With a month to go, [WorkSafe data](#) shows that New Zealand has recorded less than half the work fatalities it recorded last year (47 vs 108) and is on track for the

lowest total for at least ten years. After the shocking number of fatalities in [2019](#), that’s good news for everyone.

## AUD\$3M fine and prison terms in Queensland's first industrial manslaughter prosecution

An auto-wrecking company is the first company [convicted](#) under Queensland's new industrial manslaughter law. Two directors of the company were also convicted of reckless conduct.

The convictions followed the death of a worker in May 2019. He was crushed between a reversing forklift and the tray of the truck he was securing a load on. Multiple forklifts were operating in the area when the victim was struck.

The investigation revealed a sadly familiar picture of no documented safety systems, an unlicensed forklift driver, and a failure to effectively separate plant and workers.

The judge found that the moral culpability of each defendant was high. "The defendants knew of the

potential consequences of the risk, which were catastrophic. Steps to lessen, minimize or remove the risk posed by mobile plant were available. Those steps were neither complex nor overly burdensome."

Each director received a prison sentence of 10 months, wholly suspended for 20 months – meaning unless they commit another offence, they will not go to prison. The company was fined a staggering AUD\$3M.

We reported on the potential for an industrial manslaughter law in New Zealand in our April 2019 issue of the [Safe Side](#). With a new Minister, the Pike River Mine Recovery and police investigation nearing completion, and a majority Labour Government, we may see more developments on this front over the coming year.

## A forestry fatality leads to a reparation order of over \$365,000

Forestry and Logging remains one of New Zealand's most deadly industries. Tragically, eight workers were killed in [work accidents](#) in the sector from January 2019 to January 2020.

Almost all work deaths will be investigated by WorkSafe. Some of these investigations will lead to a prosecution. And a resulting conviction can be very costly, as the recent sentencing for a forestry fatality again demonstrates.

The [Court case](#) arose after one of the contracting company's workers was found crushed under a fallen tree in May 2017. He had been manually harvesting trees alone with a chainsaw.

No one witnessed the accident, but the investigation concluded it was likely the tree the worker was felling had brought down a dead tree which then fatally crushed the worker. The number of dead trees in the block was a recognisable hazard and WorkSafe argued machine felling should have been used before manual felling.

At sentencing, the defendant was ordered to pay reparations of \$365,225. This was made up of reparations for emotional harm of \$110,000 and consequential losses of \$255,225. As reported in our [October issue](#), reparation awards well above \$300,000 are no longer unusual.

The principal to the forestry contracting company was also convicted of the less serious charge of failing to consult and coordinate with the contracting company. Although this offending was not found to be causative of the death, a fine of \$7,000 was imposed and a conviction recorded.

Given the hazards of forestry and logging, the increasingly common awards of substantial reparations, and the potential for multiple deaths in the sector, VL recommends that insureds maintain adequate limits of indemnity to cover all the insurable costs that could arise from an investigation and conviction.

## Using vehicles in agriculture safely

Between June and September this year, seven people were killed by work in the agricultural sector. Six of these fatalities were associated with vehicle use – two with quad bikes and, perhaps surprisingly, four with tractors.

WorkSafe has produced [extensive guidance](#) on using vehicles safely on the farm. This includes seven key

messages which range from the obvious like wearing a helmet or seatbelt (where one is fitted), to the less obvious like reading the owner's manual. WorkSafe also has specific advice for operating quad bikes, side by sides, two wheeled motorbikes and tractors.

## A new Minister and a novel mob of safety mascots

New Zealand has a new Minister for Workplace Relations and Safety. Michael Wood takes over from Andrew Little who stepped into the portfolio following Iain Lee-Galloway's resignation earlier this year. [Mr Wood](#) has been an Auckland Council member and a senior negotiator for the Finance Sector union Finsec. The coming year should reveal whether Mr Wood will take the portfolio in a new direction.

Meanwhile, WorkSafe has put meerkats in charge of sharing its new health and safety message – "If you can sense it, you can stop it." WorkSafe says the new campaign will roll out over the next six months and is premised on the idea that, like a meerkat, we all have the instinct to sense danger. More information is available from [WorkSafe](#).

*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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