

We all live with "dust" in our everyday lives but we may not appreciate that some types of dust are deadly. In this issue, we look at two prosecutions that resulted from a failure to control the risks associated with exposure to dust in a workplace. We also cover a prosecution in New South Wales that arose after a labour hire worker was killed at his workplace along with a case where an Auckland company was prosecuted after a worker was shot in the heart with a nail gun. In addition, we summarise some of the duties of PCBUs in relation to first aid and update you on a Bill before the Victoria Parliament to make it unlawful to insure against health and safety fines.

## Australian labour hire company fined following worker's death

Labour hire arrangements have become an increasingly common way of businesses engaging labour but it is important that all the parties involved understand and fulfil their health and safety obligations.

A [labour hire company](#) in Victoria has been fined \$50,000 and ordered to pay costs of \$10,438 after the death of a worker at a timber mill.

The deceased man started work in one part of the mill in February 2018 but he was soon moved to a new role in a different section of the mill. In May 2018, he was removing timber from a machine when he was dragged into the unguarded shaft of a conveyer belt. He suffered multiple injuries and died at the scene.

After the conviction, WorkSafe Victoria said that labour hire agencies not only need to establish if a workplace is safe in the first place, they must also continue monitoring their employees and consult with them on health and safety

matters relevant to their job. The timber mill company is also facing health and safety charges as a result of the death.

WorkSafe New Zealand has commissioned [research](#) on the labour hire industry in New Zealand and the health and safety risks associated with it. However, it is yet to provide comprehensive guidance.

In the meantime, SafeWork Australia has useful [guidance](#) for PCBUs that is relevant to the New Zealand legislative framework. It notes that labour hire arrangements can be complex, but no party can contract out of their duties and each PCBU must meet their duty to the extent to which they have the capacity to influence and control the safety of the worker. Duty holders must also share information, including when changes in work circumstances occur, and should not assume that someone else is taking care of the health and safety of the worker.

## First aid obligations under HASWA

Health and safety legal obligations extend beyond preventing accidents. PCBUs also need to be prepared to provide immediate and basic care to an injured person through the effective provision of first aid.

There are specific [regulations](#) that cover first aid equipment and training. Adequate equipment must be provided in the workplace and each worker must have access to the equipment and first aid facilities. On top of this, an adequate number of workers must be trained to administer first aid.

What is adequate for any workplace will depend on factors such as the work being carried out; the nature of the hazards in the workplace; and the size, location and composition of the workplace. Unsurprisingly, highly hazardous and remote worksites will require more comprehensive first aid arrangements than a shop in the city.

Penalties for failing to meet these obligations are a fine not exceeding \$10,000 for an individual or \$50,000 for a PCBU. It is important to note that no actual harm has to occur for an offence to be committed.

WorkSafe has practical and useful [guidance](#) for PCBUs on first aid at work. Becoming familiar with the guidance (and following it) will help PCBUs comply with their legal obligations. It may also save someone's life.



"When did you last restock the first aid cabinet Miss Tompkins?"

## Fine for obstructing an Inspector

A person conducting a logging operation in Wairarapa has been [convicted](#) and fined \$12,000 for obstructing inspectors exercising their compliance powers. The offending occurred when the defendant obstructed inspectors carrying out two site inspections and when he also failed to provide a statement when required.

This is the second time the individual has been prosecuted by WorkSafe. In 2018 he was convicted and fined \$32,000 for three offences, including two for obstruction. You can also read about two similar convictions in [Issue 20](#) of *The Safe Side*. A key point to note is that a Statutory Liability policy may not respond to this type of offending.

## Failure to manage dust hazards leads to prosecutions and serious harm to workers

We all live with dust in our day to day lives. But some types of dust cause irreversible chronic conditions and may lead to serious illness or death. PCBUs must manage dust risks in the same way as other risks. Failure to do so may lead to prosecutions.

Accelerated silicosis is a distinct and aggressive form of lung disease caused by exposure to respirable crystalline silica dust and especially affects those who work with engineered stone. A company manufacturing and supplying engineered stone benchtops in [Queensland](#) was recently prosecuted for failing to control the risks associated with the dust.

Stonemasons who worked for the company initially had to cut the benchtops dry and without dust suppression. Some improvements were made although work practices remained below standard. Four employees were diagnosed with silicosis. Despite subsequent visits by inspectors and improvement notices, failures continued. The company was convicted and fined \$240,000 for failing to ensure the health and safety of its workers.

WorkSafe NZ has also shown a strong interest in silica dust. In 2019, inspectors [visited](#) 113 businesses known to be working with engineered stone to ensure the risks in the workplace were being managed and effective controls were in place to protect workers. A total of 118 notices were issued to 62 businesses. Businesses are now being revisited to check risk management and controls, and to ask workers to have a health check. Given this level of scrutiny, it will be

surprising if some inspections do not result in enforcement action. Extensive guidance on accelerated silicosis can be found [here](#).

But it is not only silica dust that PCBUs need to pay attention to. Hazards can arise from multiple sources of dust.

In New Zealand, a producer of specialist mineral pellets for bovines was [prosecuted](#) for failing to protect its workers from dust produced during manufacturing. The batching and pelletising process used in the factory created significant amounts of dust and many of the products used were hazardous to health. Although the company regularly engaged a health and safety consultant, at no time was the issue of the hazardous substances raised by them.

After a complaint was made to WorkSafe, inspectors visited the factory in March 2017 and numerous issues were identified. Exposure monitoring was undertaken on two workers in July and identified that inhalable dust greatly exceeded workplace exposure standards. Monitoring of the workers' lung function in May 2017 also showed that three of the four workers tested were below the normal range.

WorkSafe filed charges against the company. At sentencing, and after taking into account the PCBU's financial situation, the Court imposed a fine of \$70,000 to be paid in instalments over three or four years. Costs of \$4,740 were also ordered. The company had already paid compensation to the workers at the time of sentencing and this was not considered.

## Sentencing after man shot in the heart with a nail gun

An Auckland company that manufactures mattresses and bed bases has been [convicted](#) and fined a total of \$250,000 after a worker was shot in the heart by a nail gun in September 2019. It was also ordered to pay \$15,000 in reparations. The incident occurred when a worker tried to free a hose that supplied air to a nail gun. The nail gun recoiled, and a nail was fired into the chest of another worker who was walking past the work area.

The case highlights the importance of undertaking wide ranging risk assessments to consider all the ways workers can be seriously harmed or killed from work. In this case, WorkSafe argued that the company should have established an exclusion zone around the workstation where the nail gun was in use.

## Bill to outlaw insurance for health and safety fines introduced by Victorian Government

It has long been [unlawful](#) to insure against fines for health and safety offending in New Zealand although this has not been the case in all Australian jurisdictions. However, this may be changing in Victoria. The Government has introduced an [Amendment Bill](#) preventing employers from

dodging liability for breaching workplace safety laws by prohibiting contracts that insure or indemnify a person against paying monetary penalties under workplace safety laws. It will also extend cover to labour hire situations.