

*This month we cover the significant and concerning conviction of a New Zealand company after its employee was injured while working overseas. We also have articles on two recent convictions that resulted in fines of more than \$400,000, as well as a prosecution that arose after a quad bike fatality. Finally, we touch on new research about creating safer and healthier work for those in the trucking industry.*

## Prosecution of NZ based company after worker is injured on ship outside NZ

A New Zealand biosecurity company has been [fined](#) \$245,000 and ordered to pay \$66,089.96 in reparations after its employee was seriously injured while working outside NZ on an internationally-flagged foreign ship. The fact the injury occurred outside NZ is a concerning expansion to the application of the Health and Safety at Work Act (HASWA) which may impact on the liability exposures of PCBUs that send workers overseas.

Maritime NZ brought the prosecution after a fumigation technician employed by the company fell two metres while working on a logging ship. The worker sustained significant injuries, including a fractured femur and dislocated knee. It took nine hours for the crew to notice the technician was missing and locate him. It took a further three days for the ship to reach the nearest port where the technician was taken to hospital.

Maritime NZ's investigation found that there were inadequacies in the company's training for technicians working at height. In addition, the company did not have an effective means of communication with its employees while at sea and failed to ensure that the ship had adequate first aid equipment and supplies, including having pain medication on board. The full judgment is available [here](#).

Following the conviction, Maritime NZ said that: "This decision shows how the Health and Safety at Work Act protects New Zealand-employed workers, wherever they are working across the globe."

This assertion, however, is yet to be tested in Court. Because the company pleaded guilty to the charge, the matter did not go to trial and the Court did not consider whether the offending was within the jurisdiction of a NZ Court. As [Minter Ellison Rudd Watts](#) explain, HASWA specifically deals with jurisdiction outside NZ in relation to aircraft in operation and ships and workplaces in NZ's exclusive economic zone and continental shelf. It also applies to an NZ ship "wherever it may be" but only to a foreign ship "on demise charter to an NZ-based operator when it is operating in NZ". Neither of those criteria applied to this case because the ship was Panamanian-flagged and not operating in NZ when the incident occurred.

It appears Maritime NZ's view is that PCBUs in NZ ought to give adequate consideration to health and safety when sending workers overseas. This is because HASWA does not require actual harm to occur for an offence to be committed. Therefore, the location of the incident that causes the harm may not be relevant.

The insurance arrangements of the biosecurity company are unknown as are the reasons that persuaded it to plead guilty. But it is worth noting that comprehensive statutory liability cover may fund a matter to go to trial when the law is unclear or should be tested.

## New transport safety research released by WorkSafe

Waka Kotahi crash data shows that during 2019, there were 57 fatal crashes, 170 serious injuries and 521 minor injuries involving trucks in the Transport, Postal, and Warehousing sector. In addition, transport, postal, warehousing, and manufacturing workers are at risk of poor health outcomes from shift work, long hours, exposure to diesel and moving vehicles, fatigue, and poor access to rest facilities. In response to this high level of harm, WorkSafe commissioned [research](#) to help find solutions.

The resulting report, which was released last month, makes 13 systems focused recommendations to minimise vehicle related harm across supply chains. Significantly, these include further developing health and safety legislation and the enforcement of it, with a specific focus on PCBU responsibility and regulatory enforcement throughout the

supply chain. You can read the full report including all the recommendations [here](#).



## Large fine after a second person in care drowns while in the bath

A major provider of residential care for people with intellectual disabilities has been [convicted](#) and fined \$425,000 after an intellectually disabled person drowned in a bath, following another death in similar circumstances in 2014.

The size of the fine was likely influenced by the failure of the provider to fully learn lessons from the earlier death. Although the provider had updated its hazard register to include the risk of drowning and introduced a control plan around providing baths to service users in care, including the need to specify the level of support on a patient-by-patient basis, it did not identify the risk posed to this service user from drowning in the bath.

In addition, the provider failed to ensure that it developed and implemented effective information and guidance for workers on how to bath service users in a safe way. It also

failed to ensure that homes that utilised baths were monitored to ensure the risk of bathing was being appropriately managed and that there was an effective system for information sharing between staff.

WorkSafe commented that: "It's all well and good to have these plans in place, but unless they're being implemented and risks are being properly managed, they are absolutely pointless."

In addition to the fine, reparations of \$75,000 were awarded by the Court to the victim's family and significant court costs of \$52,518 were awarded to WorkSafe. It is worth noting that while it is unlawful to insure against fines, VL's Statutory Liability policy will generally cover Court costs as well as reparations and legal fees incurred during an investigation and prosecution.

## Combined fines and reparations of more than \$1M following a forestry death

In February 2019, a breaker out worker in Tologa Bay was struck by a log being hauled out of a valley by a skyline cable. Sadly, he died at the scene. Following a [prosecution and conviction](#), combined reparations and fines for two of the companies involved in the work totalled more than a million dollars.

The WorkSafe investigation found that the workers of the company in charge of the breaking out and harvesting work were not following the recommended safe retreat distances. At the time of the incident, the victim was 18-20 metres away from the skyline cable when he should have been at least 45 metres away according to industry guidelines.

Earlier audits had been commissioned by the company and its principal in 2018. The results of these audits highlighted issues with the way in which a breaker out crew was operating. Despite the results of the audits being available

to the two companies in the months prior to the incident, the companies failed to take corrective action.

WorkSafe commented that had the two companies discussed the audit results as and when they were provided and taken action as a result of the issues identified, then this tragic incident could have been avoided.

The company in charge of the breaking out and harvesting work was fined \$468,000. The principal that engaged it was fined \$288,000. Total reparations of \$256,408 were ordered to be paid to the victim's family.

Forestry remains NZ's most lethal industry and VL strongly recommends that all those involved in the sector have sufficient limits of indemnity to cover both the high levels of reparations now being awarded and the provision of high quality legal representation to minimise substantial fines.

## Waikato company fined after worker dies in quad bike crash

Quad bikes continue to kill and injure workers at an alarming rate. There have been 75 fatalities resulting from quad bikes since 2006 and a further 614 people have been seriously injured. Inevitably some of those incidents will result in prosecution.

In January 2020, an experienced employee on a Waikato farm was fatally injured when the quad bike they were riding rolled on a steeply sloping area. The victim was found pinned underneath the quad bike. No crush protection device (CPD) was fitted.

The resulting WorkSafe investigation found that the quad bike provided to the staff member had incorrectly inflated tyres with significant variations of over-inflation of tyre

pressures. It also found that the staff member had not been trained and instructed on how to check and maintain tyre pressure.

The company was [convicted](#) and fined \$230,000. A further \$110,000 was ordered to be paid to the victim's family.

WorkSafe says it strongly recommends that farmers consider what vehicles are best suited for the different roles and terrain of their farms. A side by side vehicle or farm ute may be a safer option than a quad bike for some jobs. It also recommends that businesses consider installing CPDs on the back of quad bikes. There are [subsidies](#) available from ACC to meet some of the costs involved in installing these.