

The Health and Safety at Work Act (HASWA) has very broad coverage. This includes placing extensive duties on some designers, manufacturers, suppliers and importers of plant, substances and structures. We begin this issue by looking at the first prosecution for a contravention of these duties. We also cover the alarming increase in work fatalities over the past year and WorkSafe's new position on installing crush protection devices on quad bikes. And to help businesses cope better after a health and safety accident, we begin a series of articles about what a PCBU can do to prepare.

- Jane Birdsall, Health & Safety and Statutory Risk Consultant

Designers', manufacturers', suppliers' and importers' duties under the spotlight

The first conviction for a breach of health and safety duties as a designer and manufacturer saw an engineering company fined \$60,000 in the Christchurch District Court. The fine was reduced from a starting point of \$500,000 to take account of the company's financial circumstances. The injured worker's employer was also convicted and fined. [Read more ►](#)

The prosecution arose after a worker had four fingers amputated while using a log splitter. Three fingers were later re-attached in hospital. The investigation found that the machine was not designed or manufactured with adequate guarding of dangerous parts.

The duties of PCBUs that [design](#), [manufacture](#), [import](#) or [supply](#) plant, substances and structures that are to be used (or could reasonably be expected to be used) at a workplace, are significant. Amongst other obligations, PCBUs must carry out or arrange for testing to ensure the plant, substance or structure is without health and safety risks, so far as reasonably practicable. In addition, PCBUs must provide certain information about the plant, substance or structure.

PCBUs should clarify whether they have duties as an "upstream" duty holder. WorkSafe has produced useful [guidance](#) on this topic.

Business should also take out appropriate statutory liability cover to protect themselves should WorkSafe investigate or prosecute.



"If anyone calls, I've gone to look for Wally."

WorkSafe likely to require crush protection devices on quad bikes in the future

Quad bikes are a serial killer in New Zealand workplaces. Eighty-one people were killed on work quad bikes between January 2000 and October 2017. Three have died since July last year. Most fatalities and injuries are caused by roll overs.

[WorkSafe has announced](#) that it strongly recommends the use of crush protection devices (CPDs) on the back of quad bikes. CPDs provide a survivable space for the rider if he or she gets trapped under the quad bike and reduce the significant risk of suffocation and crush injuries.

WorkSafe's policy clarification on using CPDs says that WorkSafe is likely to require CPDs on quad bikes in the future and that it will then enforce compliance if necessary. If a CPD is installed according to the manufacturer's instructions, and it harms a person in a roll over, WorkSafe says it won't take enforcement action regarding the decision to install the CPD. [Read more ►](#)

ACC is supporting the move to install CPDs by providing a [\\$180 subsidy](#) for self-employed PCBUs and SMEs purchasing WorkSafe recommended CPDs.

In general, WorkSafe recommends that alternative vehicles are used instead of quad bikes if this is reasonably practicable. Further information on the [safe operation of quad bikes](#) is available on the WorkSafe website.

Planning for a PCBU's response after a workplace incident

A workplace incident can be upsetting and confronting – especially if someone is seriously hurt or killed. But a good crisis response plan (CRP) can help to ensure the best outcome for the PCBU, its workers and the victim/s. This article looks at some of the initial steps a PCBU should consider including in its CRP. We'll consider further steps in the next issue of *The Safe Side*.

Obviously, the first priorities are ensuring the ongoing safety of the site or process (including evacuation if necessary), first aid for anyone injured and contacting emergency services. These things should already be covered in a PCBU's [emergency plan](#).

Once these actions are in hand, PCBUs need to meet their statutory duties to [notify WorkSafe](#) and [preserve the site](#). WorkSafe produces [guidance](#) on meeting these duties. VL recommends that PCBUs become familiar with these

duties before an incident occurs and that the relevant WorkSafe links and contact details are added to the CRP. Failure to comply with these duties is an offence.

The next step is for the PCBU to let their insurance broker know. Their broker will contact the insurer who will arrange for legal representation. The sooner a lawyer with expertise in health and safety is appointed, the better.

A PCBU should also ensure it takes immediate steps to look after the victim/s (and/or their family) and workers. These are important relationships. Building and maintaining them will likely make a difference in the long run.

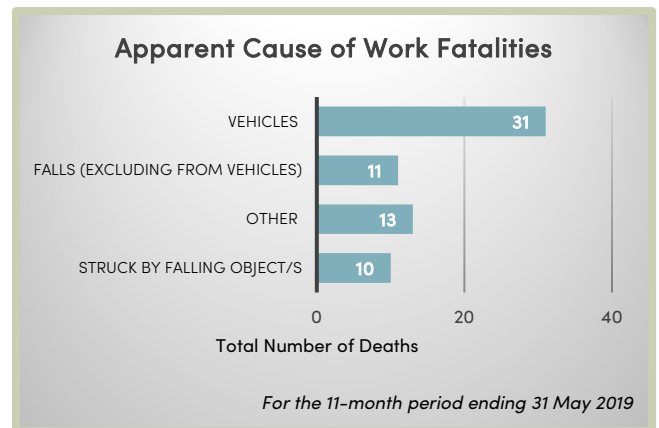
Assign roles and responsibilities to people in the CRP and make sure staff are trained and understand what is required of them. Then, if the worst happens, the PCBU will be better placed to successfully manage it.

Significant increases in work fatalities for the 2018/2019 year

The current year has not been a good one for health and safety in New Zealand. The [provisional WorkSafe figures](#) for the 11 month period ending 31 May 2019 show that 65 people were killed by work activities. By comparison, 48 people died over the entire 2017/2018 year.

Work vehicles are killing more people than anything else. Of the 65 individuals killed up to 1 June 2019, 31 deaths were linked to work vehicles. Of those who died, 10 were struck by vehicles and 13 were in vehicles that rolled or overturned. These figures largely exclude road crashes.

Eleven people died from falls other than from vehicles – the second most common cause of death. A further ten people were killed after being struck by falling objects including trees, stacks of material or loads.



Health, safety and other statutory liability news in brief

UK company fined £5m and ordered to pay £1m in costs

A large UK oil and gas company was fined an eye-watering £5 million following an explosion which killed four workers and seriously injured another. [Read more ►](#)

Companies charged over missing bike brakes

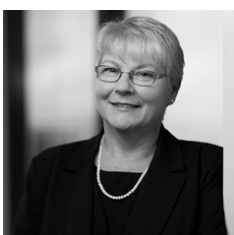
Two companies face charges filed by the Commerce Commission for failing to provide bikes that complied with the mandatory safety standard. [Read more ►](#)

Community work for trimming trees next to powerlines

An employer was sentenced to 60 hours community work and fined \$65,000 after a worker sustained an electric shock and fell from a ladder. [Read more ►](#)

Multiple parties fined for dairy effluent breaches

Three companies (including the investment company not involved in day to day operations) were fined a total of \$204,000 after dairy effluent discharges. [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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