

The last few months have been dominated by COVID-19 as the Delta variant has spread through our communities. In this month's Safe Side, we look at some of the health and safety issues associated with COVID-19 including the commencement of two prosecutions in Australia, the vaccination of employees and working from home. We also touch on the review of the Adventure Activities regime that was initiated after the Whakaari/White Island eruption along with a prosecution that followed a worker's death in machinery on a factory ship.

WorkSafe Victoria charges a government department and business over alleged COVID-19 failures

[WorkSafe Victoria](#) has charged the Victorian Department of Health with an eye-watering 58 health and safety breaches as a result of alleged failures during their oversight and coordination of Victoria's hotel quarantine programme. Seventeen of the charges relate to the safety of employees and 41 relate to the safety of persons other than employees. The maximum penalty for each of the charges is AU\$1.64 million.

The Department of Health was responsible for the State's quarantine programme between March and July 2020. The Victorian Government's [COVID-19 Hotel Quarantine Inquiry](#) found that breaches of containment in the program during May and June were inextricably linked to the second wave of COVID-19 cases in Victoria with devastating social and economic consequences. Hundreds of lives were lost.

WorkSafe Victoria alleges in the charges that employees of the Department as well as other workers were put at risk of serious illness or death through contracting COVID-19 from an infected returned traveller, another person working in the hotels or from a contaminated surface.

More specifically, WorkSafe Victoria alleges that the Department failed to appoint people with infection prevention and control (IPC) expertise at the hotels it was utilising for the program and failed to provide security guards with face-to-face IPC training by a person with expertise prior to them commencing work. It also either failed, or initially failed, to provide written instruction for the use of PPE and wearing of masks.

In a further prosecution relating to COVID-19 risks, a Victorian [accommodation business](#) has also been charged by WorkSafe Victoria. The company agreed to house a number of homeless people as part of the Victorian Government's COVID-19 pandemic response. On 28 September 2020, WorkSafe alleges the company failed to have a COVID-19 Safe Plan in place, failed to require contractors to sign in on entry and failed to require people entering the premises to wear a mask that covers the mouth and nose. As a result of these failings it is alleged patrons and contractors at the accommodation were exposed to risks to their health and safety.

WorkSafe Victoria notes that a number of other investigations relating to the control of COVID-19 related risks in workplaces remain ongoing.

To VL's knowledge, WorkSafe NZ has not filed any charges resulting from similar failures in New Zealand and we reported on WorkSafe's earlier apparent reluctance to do so after seven nurses became infected at Waitakere Hospital in Issue 15 of [The Safe Side](#). However, if a major outbreak occurred as a result of failures to implement obvious controls for COVID-19 in the work place, WorkSafe NZ may yet decide to take enforcement action.

Keeping workers safe while working from home

With the return of lockdowns, many of us are back to working at home with all the associated health and safety risks that entails. While it may not be possible for a worker to set up an ideal workstation at the kitchen table, health and safety obligations continue and PCBUs must do all that is reasonably practicable to support their workers' safety and health. This may include supplying equipment to workers who need it and/or discussing safe ways to use what they have available. It may also involve regularly checking in on their wellbeing and reasonably adjusting metrics and expectations.

We covered working from home in Issue 17 of [The Safe Side](#) and WorkSafe has refreshed its [guidance](#) on the topic.

WorkSafe has also published guidance for [workers](#) and [PCBUs](#) on staying mentally healthy when working at home.



"Obviously, we need to readjust to in-office meetings."

The vexed vax question for PCBU's – should vaccination be mandatory for workers?

The [COVID-19 Public Health Response \(Vaccinations\) Order 2021](#) makes it clear that certain [work at the border](#) can only be carried out by vaccinated workers. PCBU's are [legally obliged](#) to notify each worker who must be vaccinated of that duty; and not prevent them from reporting for, and undergoing, vaccination during their working hours, if vaccinations are available during those hours. In addition, PCBU's have obligations in relation to [vaccination records](#). The Government has also [announced](#) that many workers in healthcare and education will be brought under the same regime.

Some workers who are not covered by the Vaccination Order may still need to be vaccinated for a PCBU to meet its Health and Safety at Work Act duties – but identifying who these workers are is less clear cut. WorkSafe says that employers can require work to be done by a vaccinated employee if a risk assessment identifies this is necessary for work health and safety purposes. This may be where the nature of the work raises the risk of COVID-19 infection and transmission above the risk faced outside work.

WorkSafe has developed a series of [considerations](#) to

work through as part of this risk assessment process. When completing the risk assessment, employees and their representatives should be consulted and WorkSafe suggests that PCBU's may like to engage a [health and safety professional](#) to provide advice on their specific circumstances.

PCBU's will also need to consider any [employment](#) implications that arise from making vaccination mandatory for certain roles or wanting to obtain information about an individual's vaccination status. Employment New Zealand advises, for example, that employees cannot be redeployed or disadvantaged for refusing to disclose their vaccination status, unless particular work cannot be done by unvaccinated employees. In addition, [collecting, storing and sharing](#) vaccination information must be done in accordance with the Privacy Act.

Even if a risk assessment determines that vaccination is not required for a particular role, WorkSafe says that PCBU's can still make it as easy as possible for employees to get vaccinated as this is a great way to support New Zealand's fight against COVID-19.

Fishing company ordered to pay over \$500,000 after the death of a worker

A large New Zealand fishing company has been fined \$375,000 and ordered to pay \$121,860 reparations and \$35,000 in costs following the death of a worker in November 2018. The [prosecution](#) arose after a crew member on a fishing factory ship was killed in the ship's automated freezer system. The man was attempting to clear a blockage very early in the morning when the system was activated. He became caught and fatally injured in the moving parts of the machinery.

The risks in the freezer system were identified as a "high risk" in 2016 when the ship was purchased. Maritime NZ's investigation found that the company could have guarded the machinery in the automated freezer system so blockages could be cleared without exposing workers to moving parts. Tragically, however, Maritime NZ says it was not until after the worker's death that the company spent \$450,000 to make safety critical changes including introducing an automatic shutdown system.

An SOP for clearing blockages was available at the time of the incident but there were no records available to show it had been reviewed with the freezer man. The Judge noted that having a written SOP was of little value in practice

because the company did not monitor compliance and management was either unaware or unconcerned that the procedures were not being followed.

In any event, Maritime NZ found that the SOP was poorly worded and confusing. Workers had developed their own workarounds to clear blockages, including not calling designated personnel as required. In addition, the cage around part of the system was not always locked. This meant workers could enter the caged area to clear a blockage without the system being turned off.

Machinery continues to seriously injure and kill workers across many industries. Comprehensive [guidance](#) on machine safety is available from WorkSafe. It is crucial that any risk assessment undertaken to develop controls for machinery risks considers not only the normal operation of machinery, but all activities associated with its use including cleaning, clearing blockages and maintenance. In addition, it will often be necessary to get expert assistance from a competent person such as a chartered professional engineer qualified in machine safety – especially when considering and designing guarding solutions.

MBIE calls for submissions on changes to the Adventure Activity regime

Following the Whakaari/White Island eruption, MBIE began a targeted review of the Adventure Activity regulations. You can read about this in Issue 19 of [The Safe Side](#).

Findings from the review were used to develop proposals for changes to the regime. These proposals have now been released for public consultation.

The consultation document includes changes to strengthen requirements for how operators, landowners and the

regulator manage natural hazard risks; and how risk is monitored, assessed, and communicated. It also proposes improvements to strengthen WorkSafe's regulatory leadership role, and improve the safety audit standard, audit process and guidance and information for the sector.

Submissions on the new proposals close at 5pm on 5 November 2021. More information is available from [MBIE](#).