

We begin this month's issue with an article about the prosecution of two defence forces on opposite sides of the world. Common to both was a failure to adequately control the risks associated with training exercises. We also cover the first sentencing arising from the Whakaari/White Island investigation; a Maritime New Zealand prosecution after a jetboat driven by an impaired skipper crashed; and a sentencing in the UK that resulted in a staggering £5 million fine. Finally, we look at some useful advice from WorkSafe Victoria about passengers on trailers used in agricultural settings and the latest from the Government on health and safety COVID-19 vaccination mandates.

## Defence forces convicted for health and safety failings during high-risk training exercises

Defence forces in both New Zealand and the UK have recently been held to account for health and safety offending that saw workers suffer injuries during training exercises. The offending underscores that whatever an organisation's business is, the fundamentals of undertaking effective risk assessments and implementing controls need to be followed.

Late last month, the [New Zealand Defence Force](#) (NZDF) was sentenced in the Palmerston North District Court after three Service Persons were injured when an incendiary device ignited during a mock operation at the Linton Urban Training Facility. The Court imposed a substantial fine of \$354,750 and reparations totalling \$100,000 were ordered.

The NZDF Risk Management Plan for the operation stated that controls would be in place to ensure the health and safety of those involved, including the use of fully flame-retardant PPE overalls and a fire-resistant hood.

A WorkSafe investigation found that the appropriate PPE had not been provided to the Service Persons on the night of the incident. WorkSafe also found that a limited safety briefing had occurred, and insufficient instructions were given prior to the start of the training exercises, with some new participants on the second night not receiving any briefing at all.

On the other side of the world, the UK [Ministry of Defence](#) (MoD) was issued with a Crown Censure by the Health and Safety Executive (HSE) after an employee was shot during a training exercise. The MoD cannot face prosecution in the

UK, and a Crown Censure is the maximum sanction for a government body that the HSE can bring. There is no financial penalty associated with a Crown Censure. The Censure was given after an employee of the MoD suffered severe injuries as a result of being shot with live ammunition during a training exercise where blank ammunition should have been used.

The HSE commented that: "Just like any other employer, the MoD has a responsibility to reduce risk to its employees and others who may be affected by its work. We recognise military training can be hazardous – but where work of this nature is to be done, that danger should be controlled as much as reasonably practicable."



"I'll take the bottom bunk."

## Jet boat company & driver sentenced after driver found with drugs & alcohol in their system

On 26 January 2020, a jet boat crashed near Queenstown injuring four of the 23 individuals on board. The vessel struck two rocks in the Kawarau River at speeds of up to 80 kilometres per hour. A toxicology report found the driver, who was a casual employee, had a mix of both drugs and alcohol in their system at the time of the crash.

The jet boat company had a drug and alcohol policy in place but did not conduct random drug or alcohol tests on its casual drivers who were not undertaking regular shifts.

[Maritime New Zealand](#) said after the sentencing: "Anyone stepping on-board a vessel, especially a commercial vessel, should be safe in the knowledge the skipper is suitably qualified, fit to operate the vessel, clean and sober."

The company was fined \$150,000, while the driver was fined \$10,000 for breaches under the Health and Safety at Work Act. Information on managing drugs and alcohol in the jet boat sector can be found [here](#).

## Focussing on passenger safety when using trailers on farms

In a timely reminder for New Zealand farmers, WorkSafe Victoria has released an informative article about trailer safety in the agricultural sector. This follows the deaths of three workers in trailer related incidents on farms in Victoria since 2018. At least seven people were also seriously injured.

In February, a 70-year-old worker suffered critical head injuries and later died in hospital after falling from a trailer being towed by a tractor. A 68-year-old worker also lost his life when he fell and was run over by a tractor and trailer in 2020 and a 56-year-old farmer died after he was crushed while feeding stock using a tractor and trailer on a farm in 2018.

[WorkSafe Victoria](#) says there is no safe way to ride on trailers and attachments that are not designed to carry passengers and there is a risk of falling, being thrown off or being crushed by loads that shift and fall. Attachments,

including trailers, are vital pieces of equipment on farms but like any tool, they should only be used for the task they have been designed for.

If the attachment is designed to carry people, such as for planting or vegetable harvesting, it must provide the same level of protection as the operator from hazards, in particular safe work platforms with handrails and guarding to reduce the risk of falls, ejection and entanglement in moving parts.

If the attachment is not designed to carry people, such as a fruit bin trailer, areas where there is the ability to ride on the trailer should be eliminated as far as reasonably practicable.

Vehicles continue to be a major source of harm on farms in New Zealand. More general WorkSafe guidance about keeping safe when using farm vehicles is available [here](#).

## Charter company fined for failings related to the Whakaari/White Island eruption

A [charter company](#) has been sentenced in the Auckland District Court for health and safety failings related to the Whakaari/White Island eruption. A fine of \$227,500 was imposed together with an order to pay prosecution costs of \$40,000.

The company did not have customers on the Island at the time it erupted, but it had facilitated a tour earlier in the day.

WorkSafe said that the company's customers could have easily been killed or harmed if the eruption had happened at a different time.

Twelve other parties have also been charged in relation to activities on Whakaari/White Island on the day it erupted. Because of this, very little further information was released about the circumstances of the prosecution.

## UK gas network company fined staggering £5M after a fatal gas explosion

In a sobering reminder of how high fines for health and safety breaches can be in overseas jurisdictions, a [UK gas network company](#) was given a fine of £5 million for health and safety breaches after a fire and gas explosion at a home in West Yorks. The company was also ordered to pay costs of £91,487.

The Court heard that on 11 February 2019, West Yorkshire Fire service were called to a fire and explosion in the town of Mirfield. The occupier was discovered during a search

of the house while it was still on fire. She was taken to hospital but died the following morning.

An investigation by the Health and Safety Executive (HSE) found that the source of the gas escape was a fractured six-inch cast iron main running under the carriageway to the front of the property. The investigation found that the main did not appear on the gas company's drawings and had therefore not been maintained.

## Government advises businesses – it's time to review company-imposed vaccine mandates

With high vaccination rates and COVID-19 becoming widespread in the community, the [Government](#) is recommending that businesses take a cautious approach to vaccine mandates based on health and safety reasons, and immediately pause any employment processes that they may have underway such as consultation over implementing an employer-vaccination requirement, including redeployment, leave or termination of the employment of unvaccinated workers.

In addition, the Government is encouraging businesses to review their [COVID-19 work health and safety assessment](#) against the latest public health advice. Review of the suitability and sufficiency of controls should be a standard practice when managing any risk arising from a business's activities.

The [Minister of Workplace Relations and Safety](#), Michael Wood, advised that: "Employers may still be able to maintain vaccination requirements where they continue to be supported by a workplace health and safety risk assessment, but the reason will need to be specific to their role and set of circumstances. We would anticipate this will significantly reduce the use of vaccine requirements in most settings and the circumstances are likely to be more limited than they have in the past now that Omicron has entered the community."

"Throughout the pandemic, employers have shown their ability to adapt and respond to our changing environment while supporting employees. I'd like to thank them for the part they continue to play in keeping New Zealanders safe," Michael Wood said.