

Falls from height continue to be a perennial cause of harm in the workplace and in this issue, we provide a snapshot of the harm they are causing in New Zealand as well as covering two recent overseas prosecutions after falls seriously injured or killed workers. We also have articles on the first sentencing for industrial manslaughter in Queensland, the withdrawal of charges against NEMA in relation to the Whakaari/White Island eruption and a safety alert from WorkSafe on the dangers of coronavirus to occupational divers. Lastly, we look at a prosecution in the UK that should serve as a salient reminder for schools in New Zealand to take sensible and proportionate measures to controlling risks arising during school trips.

## Falls continue to be a major cause of harm in the workplace

Falls continue to injure and kill workers in New Zealand at an alarming rate. From October 2020 to October 2021, 3 workers were killed by [falls from height](#) and it was the fifth most common accident type causing a fatality. In terms of [injuries](#) resulting in more than a week away from work, falls from height accounted for 2,142 injuries from May 2020 to April 2021. It was the sixth most common type of injury accident.

Examples of failures to protect workers from falls are found across all [industries](#) and jurisdictions. In March 2022, an Australian residential construction company and its director were [fined](#) a total of more than AU\$320,000 for health and safety offending after a renderer was seriously injured when he fell 3.2 metres. The victim was working from an unsecured plank on the exterior of the second floor of a unit under construction when he fell. He sustained serious injuries including a fractured skull and brain haemorrhage, broken ribs, a punctured lung, lacerated spleen, fractured arm and fractured ankle. The Court found that it was reasonably practicable to have ensured the worker had scaffolding to work from. The company was fined \$250,000 and the director \$70,000.

In the same month, a transport and haulage company in the UK was [sentenced](#) after a worker died after falling from the

rear of a transport shipping container on a truck. The employee fell approximately 1.5 metres from the open container while unloading. The company was fined £200,000 and ordered to pay costs of £15,322.

WorkSafe has a wealth of [guidance](#) on managing the risk of falls from height including information on [scaffolding](#) and [ladders](#).



## Queensland records first conviction of an individual for industrial manslaughter

A man has been sentenced to 5 years in prison, suspended after having served 18 months imprisonment, following a conviction and sentencing of [industrial manslaughter](#) in Queensland, Australia. The offence of industrial manslaughter was first enacted in the state in 2017 and this is the first conviction of an individual since it came into force.

The defendant ran a business repairing and maintaining electrical items, including generators. In July 2019, the defendant was using a forklift to remove a generator from the back of the truck. The generator fell from the tines of the forklift and landed on another worker, resulting in his death. The worker was a friend of the defendant who had been assisting with the unloading.

The prosecution alleged that the defendant was negligent because, amongst other things, he was not licensed to

operate a forklift, the forklift was being used beyond its lifting capacity, there was no exclusion zone to prevent pedestrian access and there was no proper instruction, training or supervision to the other worker to ensure that he remained at a safe distance. In addition, when it became apparent that the forklift's lifting capacity was inadequate for the task, the defendant carried on unloading.

In finding the defendant guilty, the jury was satisfied that the defendant's conduct was negligent and that it caused the death of the worker on whom the generator fell.

We have previously reported on calls for the offence of [industrial manslaughter](#) to be introduced in New Zealand. The Queensland decision highlights how it could be a game-changer in terms of the severity of sentences handed down.

## Court dismisses charge against NEMA over Whakaari/White Island eruption

[Radio New Zealand](#) (RNZ) reports that a charge against the National Emergency Management Agency (NEMA) for health and safety breaches leading up to the Whakaari/White Island tragedy has been dismissed by the District Court.

Twenty-two people died when the volcano erupted on 9 December 2019. NEMA was one of the [13 parties WorkSafe charged](#) with breaching the Health and Safety at Work Act at the island. A [charter flight company](#) pleaded guilty to a charge last month and was fined \$227,500.

NEMA argued that WorkSafe "confused civil defence emergency management with health and safety risk management" and the charge was "wholly misconceived", RNZ reported.

RNZ went on to say that Judge Evangelos told the court WorkSafe's main objective was to "promote and contribute to securing the health and safety of workers and workplaces. Part of that role that it has then, would be to issue guidance to the marketplace."

He said in terms of tourism at Whakaari: "WorkSafe does not advance any evidence of any guidance WorkSafe has issued to anyone based on a duty to people beyond workplaces, workers or work activity."

The decision is a blow for WorkSafe and suggests the Crown Entity may have cast its nets too wide in its filing of charges over the Whakaari/White Island tragedy. To date, WorkSafe has not commented on the decision and it is unknown whether it will appeal.

## School in UK prosecuted after children needed rescuing from mountain during school trip

After an incident that could have resulted in multiple child fatalities, a school in the UK has been prosecuted for failing to adequately manage the risks posed by a trip to a mountain in the Lakes District. The case provides reminders for New Zealand schools about how to ensure school trips don't end in tragedy or health and safety prosecutions.

On 5 March 2020, a group of 13 Year 10 pupils were on an organised trip to a mountain in the Lake District, led by one teacher and a teaching assistant. Weather conditions on the day were cold and icy. The weather forecast highlighted the dangers of ascending above the snowline, but the school decided the trip should still go ahead as planned.

Many of the school children did not have suitable equipment. Some were wearing school shoes and school trousers and others were wearing trainers. Hikers should wear full winter clothing, including mountain boots, and carry appropriate equipment including ice axes and crampons if going above the snowline.

The adults leading the trip had no formal qualifications in mountain leadership or any experience of mountain environments in winter conditions. The party had a map but relied on a smartphone app as a compass.

Two members of the public warned the party to turn back, but the group continued and managed to reach the summit without incident. However, as the party made their descent, they strayed off the path and began traversing a section of steep terrain with vertical rock faces of around 20 metres in height.

One of the pupils slid on the ice and fell several metres sustaining minor cuts. This caused another pupil to panic and run from the group down the mountain. The two adults remained with the injured pupil and the other school children. By this time, it had begun to get dark and the temperature was dropping.

The party were eventually located and rescued by rescue teams, who cut steps into the snow to assist the party back to the path and down the mountain. The other pupil was lucky enough to make it back down the mountain and was found by members of the public.

An investigation by the Health and Safety Executive (HSE) found that neither of the adults with the party had the appropriate skills, knowledge and experience to lead the trip, and that the school had not taken advice from a suitably competent person to plan or organise the excursion. There was no effective system to check the suitability of the clothing and equipment the children had with them and no effective contingency plan in place if conditions became too difficult to proceed. The school was fined £30,000 and ordered to pay a victim surcharge of £181 and costs of £4,574.90.

The HSE commented that: "This incident was entirely avoidable. HSE recognises the benefits of outdoor learning activities including those involving hiking or trekking in mountain environments, however schools need to take sensible and proportionate measures to control the risks involved. This trip should not have gone ahead without such measures in place."

## Safety Alert released about diving and coronavirus

Occupational diving is a high-risk activity and WorkSafe has released a ["Safety Alert"](#) on the hazards associated with diving and infection with the coronavirus.

The Safety Alert says COVID-19 can have serious medical effects for divers. Anyone with respiratory symptoms should not dive and should arrange for COVID-19 testing. If testing is negative, they should see their GP for further

advice and appropriate treatment for their symptoms. In addition, close contacts of coronavirus cases and those who test positive and are asymptomatic should also not dive. The Safety Alert recommends delaying a return to diving after infection.

The advice will also be helpful to recreational divers.