

After a serious health and safety incident, a company may consider liquidation as a way to escape prosecution. However, the recent prosecution of a director of a liquidated company should serve as a warning that liquidation of the company may not protect its directors and officers from health and safety legal proceedings – especially if they are closely involved in the work that led to the death. In this issue, we cover this as well as two other prosecutions that followed the tragic deaths of children – one after a trailer crashed into a car in Northland and another in the UK where a child died on an inadequately fenced construction site. We also look at the prosecution of a sole trader for failing to provide PPE to a young worker. Finally, we provide a link to new guidance from Australia on communicating health and safety across languages and briefly remind construction sites of the need to secure loose materials before high wind events.

## Director prosecuted after company put into liquidation

WorkSafe has [prosecuted](#) the sole director of a company after a subcontractor died from a fall from height. The prosecution was commenced even though the company itself was put into liquidation 49 days after the fall.

The company had hired a painter to work on a house in Auckland. While spray painting the roof, the painter fell onto the concrete patio below. WorkSafe's investigation found there was an inadequate risk assessment and no scaffolding or edge protection in place. Neither did the director check if the worker used the harness he was given or that he was trained and competent to use one.

At sentencing, the Judge ordered the director to pay reparations of \$100,000 to the victim's family but did not impose a fine given the director's financial circumstances.

It is not clear if the liquidation was initiated to avoid

prosecution or for another reason. But this case demonstrates that liquidation of a company will not necessarily prevent a director or officer being held to account through a criminal prosecution under the Health and Safety at Work Act (HASWA). This is especially so with a small company where the director's actions are closely associated with an incident. WorkSafe commented after the sentencing that: "Individuals and directors have a range of health and safety responsibilities and liquidating your company does not absolve you of them."

A fall from height is a recurring cause of death and injury to workers – especially in construction. Specific guidance on working safely on roofs is available from [WorkSafe](#). You can also read more about falls from height in our [May issue](#) of *The Safe Side*.

## Legal obligations around PPE apply no matter how small a business is

An [agricultural fencing sole trader](#) who employed a 17 year old but failed to provide appropriate PPE has been convicted under HASWA and ordered to pay \$22,500 for emotional harm and consequential loss. He was not fined due to his inability to pay.



"Better put this on.... Health and safety."

The young victim lost the sight in his right eye after a piece of metal flew into it while he was chiselling. He was not provided with eye protection for the work. The defendant did not notify WorkSafe of the injury though he was legally obliged to do so. WorkSafe only became aware of the incident after the victim's mother complained several months later. The defendant was also prosecuted and convicted for this breach.

The defendant reportedly said that he had not provided full instruction to the victim on the use of personal protective equipment (PPE), such as safety glasses, because in his words "it was common sense". He also said he was too small and it was too expensive to buy PPE.

After the conviction, WorkSafe commented that: "The cost of health and safety is part of the cost of doing business. The worker should have been provided with appropriate PPE, including eye protection, and required to wear it when using a chisel and hammer or any other task where there is a risk of an eye injury."

The legal obligations around PCBUs providing PPE to workers and instructing them in its use are fulsome. You can read about this in [Issue 15](#) of *The Safe Side*.

## WorkSafe prosecutes trucking company after child killed in road crash

In October 2020, a [nine-year old girl](#) was killed in Northland when a trailer disconnected from the truck that was towing it and collided with an oncoming car. The child was a passenger in the car.

Expert analysis commissioned by WorkSafe as part of its investigation found the condition of the towball and tow coupling was of "significant concern". There was extensive wearing on both, which meant a small bump in the road, or change of incline, could allow the trailer to easily decouple. The trailer's certificate of fitness had also expired, and its tyres had uneven pressures.

WorkSafe alleged that the defendant company had failed to undertake regular and effective inspections of its vehicles and failed to identify the deterioration of the towball and coupling. It also said the company should

have ensured its vehicles had current warrants or certificates of fitness. Additionally, the company should have identified and logged the maximum weight every towing vehicle and trailer could manage, to ensure that towing componentry was rated safe for use.

The company was convicted under HASWA and the Court ordered reparations of \$145,000 be paid along with a fine of \$50,000.

The prosecution again demonstrates the broad coverage of HASWA. Any worker driving on the road while working is almost certainly subject to the Act as is the PCBU that the worker works for. Ensuring vehicles (and trailers) are road worthy and appropriately warranted and certificated are simple first steps that can be taken to avoid a tragedy.

## Ensuring construction sites are secured ahead of high winds

WorkSafe Victoria issued an [alert](#) to construction sites ahead of high winds in August. Given the increasing frequency of extreme weather in New Zealand, the alert is a timely reminder for businesses on this side of the Tasman, too.

The alert noted that strong winds can turn unsecured objects into dangerous projectiles, including partly completed structures, roof sheets, scaffold planks,

temporary fencing, and unsecured tools. It said that sites must be properly inspected before workers head home and that loose objects must be removed or suitably secured so that they don't blow away and become a danger to workers and the general public.

The site and any structures such as scaffolding should also be inspected after adverse weather events to ensure they are safe before work recommences.

## UK company fined after child dies on construction site that was inadequately fenced

A UK [civil engineering company](#) was fined £600,000 and ordered to pay £42,952.88 in costs after a seven-year-old boy became trapped and suffocated in a drainage pipe on a construction site. UK's health and safety regulator, the HSE, investigated and found that there was insufficient fencing in place to prevent unauthorised persons from accessing the site due to a combination of poor planning, management and monitoring of the site and its perimeter.

The child went missing from his home on a morning in July 2015 and was found the next morning by workers when work re-started at the site. Sadly, the child was deceased.

The construction site was a new-build housing development next to existing housing and adjacent to busy pedestrian footpaths and roads. The drainage pipes had been fixed into the ground in preparation for installing fence posts.

The HSE reminded the industry after sentencing that: "The dangers to children gaining access to construction sites

and treating them like a playground is an ongoing problem which must be addressed at all types of sites no matter what their complexity or size."

The case highlights the real dangers to children on any worksite. In 2020, a [New Zealand timber processing company](#) was convicted and sentenced after an unsupported stack of timber collapsed on a three-year-old boy in 2016.

The child had been visiting his father for lunch at a lumber yard and climbed on an unsecured stack of barn posts. The stack collapsed and the child died of his injuries. At the time, WorkSafe reminded businesses that children want to explore, try new things and push boundaries but again, that worksites are not playgrounds.

WorkSafe's [Absolutely Essential Health and Safety guide](#) provides a ready checklist for problems on small construction sites including points covering fencing and preventing public access.

## Communicating health and safety across languages

New Zealand is a multicultural country and some workers will not speak English as a first language. Yet it is critically important that all workers understand and comprehend health and safety information both so the PCBU can comply with its duties under HASWA and, most importantly, to keep workers and others safe.

WorkSafe Victoria has published useful guidance on [communicating across languages](#). It sets out a planned approach and suggests strategies for PCBUs to communicate with everyone in the workplace. WorkSafe NZ's [Guide to writing health and safety documents](#) may also be useful.