

*This month, we cover three prosecutions of tourism companies arising from serious incidents involving their customers. Sadly, two of the incidents resulted in a fatality. One victim was an 11-year-old girl who was killed when a bus crashed while descending from the Tūroa ski field in 2018. The other victim was a tourist who was killed in front of his family while sandboarding at Te Pahi. The third prosecution was withdrawn when a Northland dive operator had an enforceable undertaking accepted by WorkSafe. It followed an incident where two children were trapped in a cave at the Poor Knights Islands. In addition, we also have an article about an unusual Australian prosecution taken after two soldiers were attacked by a crocodile in North Queensland.*

## Enforceable undertaking accepted after children put in danger during school trip

WorkSafe has accepted an [enforceable undertaking](#) (EU) from a Northland dive company after the company committed to spending at least \$237,540 on training and community group funding in addition to undisclosed reparation payments to the victims.

The EU relates to an incident in December 2020 when a group of school children and teachers from a Northland area school were taken to the Poor Knights Islands by the dive company to snorkel and kayak.

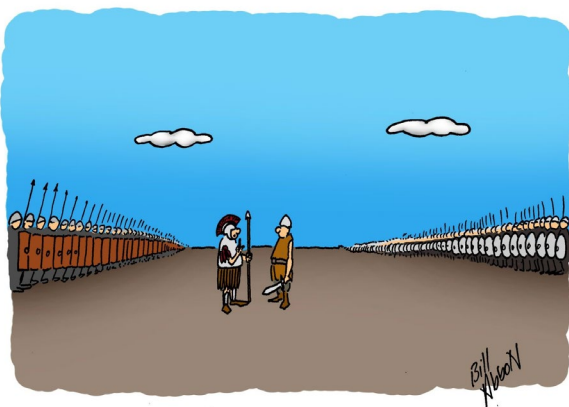
Two students became stuck when their kayak capsized in rough swells in a narrow cave. One child got her feet trapped in a crevasse and was submerged each time a wave entered the cave. After another student signalled for help, it took 15 minutes to get her to safety. Her rescuer then got stranded on a ledge with the other young kayaker until a rescue helicopter could arrive two hours later. Both children were left emotionally traumatised by the experience. The school's Board of Trustees was later [prosecuted](#) and pleaded guilty.

The EU commits the dive company to producing online training videos for staff as well as providing professional development. The company will also partner with Education Outdoors New Zealand to upskill providers who work with schools. In addition, the company will provide funding for the local coastguard, rescue helicopter and water confidence programmes for local rangatahi.

[WorkSafe](#) says the investment by the company will exceed what even the courts may have ordered in penalties and that this demonstrates a substantial commitment to health and safety, with benefits circled back to the community, workers, and the industry.

This is the first EU accepted by WorkSafe in 2023. More information on EUs can be found in [Issue 36](#) of *The Safe Side*.

## Australian Defence Force prosecuted after 2.5 metre crocodile attacks soldiers



*"So, we're agreed then – safety first."*

In a case that again demonstrates the broad reach of health and safety legislation, the [Australian Commonwealth regulator](#), Comcare, is charging the Department of Defence after two soldiers were attacked by a 2.5 metre saltwater crocodile in the far north of Queensland.

The 2021 incident occurred around 750km north of Cairns at the Cape York Peninsula, while the soldiers were transporting a landing craft for maintenance. The two men had been given permission to go fishing in a Zodiac.

After anchoring, the men went swimming and were almost immediately attacked by a large crocodile. The crocodile dragged one of the soldiers underwater and mauled him while his colleague fought off the animal allowing the men to escape. Both soldiers suffered significant injuries including bite and claw wounds and were treated in hospital.

Comcare alleges that the Defence Force failed to train workers and to provide and maintain a safe system of work including implementing policies to prohibit workers from entering crocodile inhabited waters unless there was an operational or safety reason to do so. Comcare also alleges the Defence Force failed to implement a policy on conducting risk assessments and providing a detailed safety briefing about the risk of crocodile attack when entering the water.

## Company ordered to pay \$433k in reparations five years after fatal Mt Ruapehu bus crash

On the morning of 28 July 2018, an 11-year-old girl headed to the Tūroa ski field with her father, stepbrother, and a family friend. As the group did not have chains for their vehicle, they took a commercial shuttle bus to the ski field. At around 2:00pm that day, they boarded a return shuttle bus. The girl was seated in the back row next to the left-side window, with her father beside her. The bus did not have passenger seatbelts.

While descending Ohakune Mountain Road, the bus failed to negotiate a bend, causing it to crash and tip onto its left side. Despite her father's efforts to restrain her, the girl was partially ejected through the left-side window and sustained life-threatening injuries. Sadly, she died en route to hospital. Other passengers were also injured, some seriously.

WorkSafe was notified of the tragedy by the company but [Radio New Zealand](#) reports it did not investigate under the Health and Safety at Work Act (HASWA). Neither did NZ Police.

The Coroner then held an inquest. In her [report](#) released in 2021, she found that the driver should have been in a gear no higher than second when approaching hairpin bends, and that by the time the driver sought to change down, he was going too fast to do so. As a result, he was heavily reliant on the service brakes to control his speed. These brakes overheated leading to "brake fade" and a loss of braking effort, loss of control and ultimately the crash.

The driver gave evidence that he frequently approached the bends in third gear. The bus did not have an independent emergency braking system and the road did not have sand traps or other means of halting a vehicle in the event of brake failure.

The Coroner also found that while the bus was not fundamentally inappropriate for use in the alpine environment, it was operating closer to the margins of its design envelope. In such circumstances, the need for robust vehicle maintenance and careful driver management of the service brake resource became critically important.

As a result of her findings, the Coroner referred the crash investigation back to WorkSafe to consider further investigation – effectively allowing a "second bite" of the "investigation cherry." [Section 94](#) of HASWA gave WorkSafe another six months to re-investigate and file charges despite it being more than a year since it was first notified of the incident – which is the normal charging deadline.

[WorkSafe's subsequent investigation](#) found the company had improperly maintained its buses and had fallen well short on training and supervising its drivers. WorkSafe charged the company for its health and safety failures. In April 2023, the company pleaded guilty. At sentencing, reparations of \$433,094.82 were ordered in relation to 17 victims, but no fine was imposed due to the company being in liquidation.

After sentencing, WorkSafe said that any business with a vehicle fleet would do well to re-evaluate its suitability and maintenance in light of the tragedy. It also said it is worth a close look at driver skills and training, especially in response to emergencies. WorkSafe added that since 2020, WorkSafe and NZ Police have met monthly to review all heavy vehicle incidents where fatalities have eventuated, to ensure clarity over which agency would undertake investigations and to ensure those investigations are thorough and robust.

This case has similarities to the [2016 Christmas Eve bus crash](#) just south of Wairoa that killed three members of a Tongan brass band and injured many more. The company that supplied the bus was [prosecuted](#) for not servicing or doing any other mechanical inspection before the bus left the depot and failing to provide the driver with guidance on what to do if a fault developed. Significant reparations of \$750,000 and a fine of \$210,000 were imposed at sentencing. We discuss this case in the context of cover for catastrophic events in [Issue 13](#) of *The Safe Side*.

## Big reparation ordered after sentencing for customer death while sandboarding

The [death of a tourist](#) in the Far North in 2019 has led to a reparation order of \$182,209.33 being imposed on a tourism operator. The company was also fined \$200,000 for health and safety breaches.

The victim was on a family holiday in February 2019. While sandboarding down the sand dunes at Te Pahi, he slid into the path of a moving bus. His death was witnessed by his wife, son, daughter in law, and granddaughter.

A WorkSafe investigation found the company had failed to effectively identify and control the hazards and risks of sandboarding and it had not ensured riders were kept safe from vehicles and did not have an effective traffic management system in place.

WorkSafe said that the company should have learned from an incident at the same location three years earlier, where a person sandboarding with another company was run over and seriously injured.

After sentencing, WorkSafe emphasised that the health and safety of customers must be a priority for businesses. It said that operators not only have a responsibility for their workers, but also their customers, and must not lose sight of that.

It also added that: "While we want thrill-seekers to enjoy themselves, it's critical that risks are not overlooked and businesses do what they can to keep people safe."

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