

## Health & Safety at Work | The New Regime Emerges

The Health & Safety at Work Act 2015 was effective on 4 April 2016 but only now are we getting some insight into its impact on employers and their insurers.

### Background

Under the former legislation the regulator, Worksafe, was allowed six months after an accident to decide if charges would be laid. The new Act allows 12 months and it seems that Worksafe have taken full advantage of this extended interval which means that the outcome of delayed prosecutions are only now starting to emerge.

In the 2-3 year run up to the introduction of the new legislation there was much official rhetoric on “toughening up” on errant PCBUs (Persons Conducting a Business Undertaking) with harsher penalties for perceived “guilt”.

As if that wasn't enough the [Sentencing Amendment Act 2014](#) opened up the scope for increased reparation sums to injured workers and the Courts are clearly responding with significantly greater awards with the “affordability” test being satisfied by the existence of Statutory Liability Insurance.

### Worksafe NZ v Wai Shing Ltd

The way ahead has been sign-posted in a District Court decision delivered on 22 May 2017 in the case of Worksafe NZ v Wai Shing Ltd where reparations totalling \$336,300 were awarded which included \$226,300 top up of ACC benefits plus \$110,000 for emotional harm. The company was fined just \$37,500 and its director \$12,500.

Some influences on that sentencing decision were:

- The company did not follow basic health and safety management practices i.e. understanding and acknowledging risks associated with operating a mechanical harvester, despite using it since 1996;
- The employee was not adequately trained in the use or transport of the harvester;
- The company had no emergency plan for when a person is injured while working independently;
- The company failed to notify WorkSafe of the incident when its inspectors visited the property on an unrelated matter two weeks following the incident (WorkSafe was only alerted to the incident approximately six months later by the employee's wife);
- The employee is now a tetraplegic and requires 24 hour care.

The national law firm DLA Piper has issued an excellent commentary on this case and has kindly agreed that we can share this. The commentary can be accessed by clicking on [this link](#).

Vero Liability is aware of several other cases in the pipeline where the Worksafe sentencing submissions are seeking greatly elevated reparations and harsher fines.

Insurers, including VL, will need to focus increasingly on workplace bodily injury exposures.

The future is here!

### Any Questions?

If you wish to discuss any aspect of this bulletin your [VL Underwriter](#) will be pleased to hear from you.

