

## Health & Safety in Employment Act | Sentencing Amendment Act 2014

# Frequently Asked Questions

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**Q** What could be classified as a criminal conviction regarding the Health and Safety Act? I am unsure if across the board any Health and Safety claim is counted as a criminal conviction or is there a level up which then meets the criteria for being a criminal conviction?

**A** In New Zealand if you are charged and then convicted of an offence, the conviction is a criminal conviction. However, there are lower levels of wrongdoing which, under different pieces of legislation, can result in infringement or improvement notices being issued.

In the Health & Safety context, the Act allows Inspectors to issue Improvement and Prohibition Notices (sections 39 – 45) requiring things to be improved or stopped at a workplace. It also allows inspectors to issue Infringement Notices (s56B) where the Inspector decides that a breach of the Act is taking place and, usually, where an Improvement Notice has already been issued or you have been warned to change things by the Inspector previously but have not done so. An Infringement Notice can be issued in relation to most breaches of the Act. Provided these notices are complied with, they do not result in a criminal conviction being entered – so the person would not have a criminal record as a result of getting an Infringement Notice. However, if you are later charged with an offence under the Act, the fact that you have previously been issued with an Infringement Notice will be considered by the Court.

In summary if you are charged and then convicted of an Offence under the Health & Safety in Employment Act you will receive a criminal conviction and be subject to the new Sentencing Act provisions allowing for top up reparations for amounts not covered by ACC.

**Q** Does the Health and Safety in Employment Act just apply to employees in the work place or does it apply to injured people not in the workplace as well?

**A** The Act is very wide in its application. The focus is on place of work. The Act says that its object is the prevention of harm to all persons at work, and other persons in or in the vicinity of a place of work. The Act defines what a place of work is very widely to include any place (whether or not it is a building, structure or vehicle) where any person is to work and includes any place in the control of the employer where employees eat, rest, get first aid, report, give instructions, deliver goods or vehicles, or through which they may pass to reach work (section 2). Because a place of work is wherever a person performs work, the place of work may move (e.g. a ship or a vehicle) or an employee may move through a place or work (e.g. a delivery person).

The Act does not just set out to protect employees – for example, duties are also owed to volunteers, people being trained or on work experience, people who are in the vicinity of a place of work, some visitors to the workplace depending on the circumstances of the visit and to the public to ensure they are not endangered.

**Q** Are you able to elaborate on the impact this may have on personal Liability (those not in business) for example if someone is convicted of DIC or Manslaughter in a vehicle accident could they also be potentially sued under the new sentencing act?

**A** Yes they could be affected by the new Amendment. The Sentencing Amendment Act 2014 allows the Court in criminal proceedings to order the person convicted to pay reparations to the victim that includes consequential injury costs to the extent they are not covered by ACC. Basically this means that if you are convicted of an offence, the Court can require you to 'top up' any shortfall in ACC that your victim suffers such as the 20% loss of weekly income that ACC does not meet, or where the victim earns more each week than the maximum compensation that ACC pays..

**Q** How does this affect elected trustees to a trust, are they personally liable in addition to their role as a trustee?

**A** The Sentencing Act 2002 applies to persons who come before the Court for sentence whether that is an individual, a trustee, a director or a company. Under the Sentencing Amendment Act 2014, the Court can order a person convicted of an offence to pay reparation to the victim in respect of losses above that paid by ACC. A trustee is personally liable. Depending on the terms of the trust deed, it may be that the trustee is entitled to be indemnified for that liability from the assets of the trust.