

There's no doubt that health and safety prosecutions are costing businesses more than ever before. In earlier issues of *The Safe Side*, we've covered the rising costs of fines and reparations. In this issue, we look at the potential for increasing orders for regulator costs. We cover an important case on the new duty to consult with other businesses with overlapping duties as well as machinery safety during maintenance and cleaning. And with road safety being in the spotlight, we briefly touch on employee safety while driving. You'll also find news and updates from the health, safety and the wider statutory liability world. We hope you continue to stay on the Safe Side.

- Jane Birdsall, Health & Safety and Statutory Risk Consultant

## Orders for regulator costs at sentencing

With the introduction of the [Health and Safety at Work Act](#) (HASWA) in 2015, the Courts gained a new power to order an offender to pay a "just and reasonable" sum towards the costs of the regulator taking a prosecution. This includes the costs of investigating the offence and any associated costs.

To date, WorkSafe has shown little inclination to recover the costs of investigations and has focussed on recovering some of its direct legal costs.

In 2018, when WorkSafe sought \$1,000 in costs, the High Court observed in its Stumpmaster Judgement that it thought this approach was "modest" and that it was likely that "... the legislation contemplates rather more cost recovery than that".

Since then, orders for regulator costs have crept up. Cropp Logging Ltd were ordered to pay \$10,000 in September 2018 and Cottonsoft Ltd \$10,300 in February 2019.

We can look to the UK for an indication of how high these costs could be if WorkSafe sought full cost recovery. In January 2019, a [waste company](#) was ordered to pay £130,000 in costs and fined £ 1 million after a worker was run over and killed by a rubbish truck.

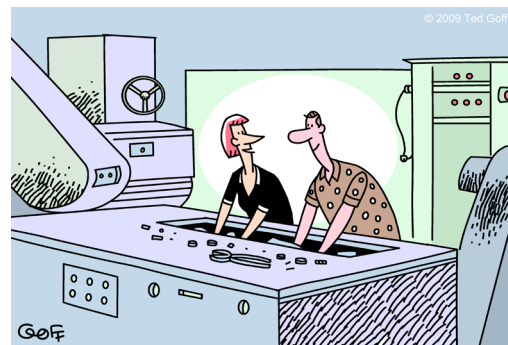
Orders for regulator costs are explicitly covered by VL's Statutory Liability insurance [policy wording](#). Nevertheless, we recommend keeping an eye on trends in this area to ensure limits of indemnity are sufficient to cover rising regulator costs as well as other insurable costs like reparations for victims and legal fees.

## Protecting workers from machinery hazards during cleaning and maintenance

Removing covers and protective devices on machinery for maintenance or cleaning exposes workers to hazardous areas that are usually guarded - and results in an increased risk of serious injury or death. Businesses have a duty to ensure they provide workers with the highest level of protection that is reasonably practicable to minimise this heightened risk.

WorkSafe regularly prosecutes companies that fail in this duty. In a recent example, Carter Holt Harvey Ltd was convicted and fined \$371,250 for, amongst other things, failing to ensure a conveyor belt was secured against inadvertent movement or that there were effective procedures for tracking belts. [Read more ►](#)

Each machine and task may need to be individually assessed for risk. Common solutions include installing interlocks on covering guards and/or implementing lock out tag out (LOTO) procedures. A risk assessment by a person who is competent in the application of the AS/NZS 4024 Safety of Machinery Series Standard, such as a Certified Professional Engineer, will help to determine the most appropriate arrangements.



**"Don't worry. There's no way in the world anyone would ever ever ever turn on the grinder while we have our hands in the blades."**

Any LOTO procedures need to be robust and secure the machinery against inadvertent movement - where this is reasonably practicable. Workers need to be competent in using the procedures and their compliance with them should be closely monitored and enforced.

More information and [guidance](#) on machinery safety can be found on the WorkSafe website. Useful information on LOTO can also be found on the US Government's [NIOSH website](#).

## The importance of working with other businesses that have overlapping duties

The introduction of the [section 34](#) duty to consult, cooperate and coordinate with other PCBUs that have the same duty requires businesses to communicate and work together to keep workers safe and healthy. WorkSafe commonly refers to this as having “overlapping duties”. The maximum fine for a failure to comply with section 34 is \$100,000.

In one of the first prosecutions relating this duty, Storage and Distribution Specialists Ltd (SDS), an SME providing third party logistics, warehousing and transport logistics, pleaded guilty to failing to consult with Kuehne + Nagel Ltd (K and N) about a safe system of work for loading its trucks. The charge resulted after an SDS truck driver was struck by a reversing forklift and sustained serious foot injuries. The driver was at the K and N site to collect goods. The [Court](#) found SDS’s culpability to be in the low to medium range and fined the company \$7,825.

K and N was also prosecuted under a more serious charge, fined \$270,000 and ordered to pay \$20,000 in reparations.

### What are the implications for business?

Almost all businesses will have duties that overlap with other businesses at some time during their operations and will need to comply with their duty to consult. This includes situations where business arrangements are formalised and vertical in nature as well as when businesses have no contractual relationship but incidentally share a workplace, for example, a construction site, a shopping mall or a multi-tenanted building.

Information on how to comply with the duty to consult is available on the [WorkSafe website](#). Safe Work Australia has also produced a useful [Code of Practice](#) on the topic.

## Keeping workers safe when driving at work

Road crashes continue to kill hundreds of people in New Zealand each year and seriously injure thousands more. For many businesses, road crashes are amongst the most significant risks of harm their workers are exposed to.

WorkSafe does not report or collect data on work-related road crashes. In the UK, the HSE reports that more than a quarter of all road traffic incidents may involve somebody who is driving as part of their work.

The risk of harm from vehicle crashes should be managed like any other work risk. The HSE publishes useful [guidance](#) on managing driving risks by approaching the assessment using the topics of safe driver, safe vehicle and safe journey.

NZTA has also published a [booklet](#) on how to write a safe driving policy. A sample [safe driving policy](#) is available on their website. Although neither is updated for HASWA, they may still be a useful place to begin.

## Health, safety and other statutory liability news in brief

### Record fine for repeated dairy effluent discharge

A total fine of \$131,840 has been given to a Cambridge farming company and one of its directors following the repeated release of dairy effluent. [Read more ►](#)

### UK company fined £1.8m after two workers injured

A Yorkshire company had a massive fine imposed by the Court after two workers fell through fragile rooflights while carrying out roofing work. [Read more ►](#)

### Safety Alert on the use of organic-solvents

WorkSafe issued a safety alert on the safe use of organic solvents following the deaths of two workers in separate

incidents. WorkSafe reminds users of the health risks of using the hazardous substances in enclosed spaces and without appropriate PPE. [Read more ►](#)

### Fine for food safety offences

Mispackaging sausages resulted in a \$40,000 fine for a small goods manufacturer, along with a \$15,000 payment to the three children who suffered allergic reactions from eating the wrongly labelled products. [Read more ►](#)

### \$150,000 in fines for companies selling unsafe toys

Three companies were fined for supplying toys which did not meet mandatory safety standards. [Read more ►](#)



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Jane has over 12 years’ experience as a health, safety and environmental regulator. She has led many significant investigations into workplace accidents as both a manager and health and safety inspector with WorkSafe New Zealand. Jane is thoroughly familiar with current health and safety practice and works with colleagues, customers and others to assist with risk analysis and reduction of risk factors in this area.

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