

The key duties under the Health and Safety at Work Act (HASWA) relate to managing risks and the potential for harm from work. This means WorkSafe may prosecute even if no one is hurt. In this issue, we look at a recent prosecution that arose after workers were repeatedly exposed to a high risk of serious injury, but no injury occurred. We also cover the new rules applying to hazardous substances, the duties of voluntary organisations and other news from the statutory liability world. And on a lighter note, we consider the health and safety of super heroes. As always, we hope you enjoy being on The Safe Side.

- Jane Birdsall, Health & Safety and Statutory Risk Consultant

New regulations on hazardous substances come into force from 1 June 2019

The rules around handling hazardous substances have been progressively changing since the move from the old Hazardous Substances and New Organisms Act (HSNO) regime to the new Health and Safety at Work (Hazardous Substances) Regulations. Businesses need to stay on top of these changes to be compliant with the law and keep workers safe.

From 1 June 2019, new storage requirements for establishing [hazardous substance locations](#) for some class 6 (toxic) and 8 (corrosive) substances came into force if quantities exceed the thresholds set out in the [regulations](#). There are also changes to the rules around [hazardous waste](#).

Managing hazardous substances can be challenging. Worksafe provides a [hazardous substances calculator](#) that businesses can use to create an inventory as well as a list of applicable regulatory requirements. Businesses should also refer to [Safety Data Sheets](#) (SDSs) for further information on safe handling and communicate this information to their workers.



"I imagine this was mentioned in the Safety Data Sheet I didn't see."

Prosecutions resulting from a risk of harm – not from a serious injury

Anyone who follows WorkSafe prosecutions knows that most result after a person is seriously injured or killed by work. But this is not always the case. Where there is a long history of non-compliance, WorkSafe may prosecute for repeatedly exposing workers and others to the risk of harm only.

This was the case when Dong Xing Group Ltd was fined \$180,000 in the North Shore District Court for failing to install safe scaffold. No one was hurt but workers were exposed to a risk of serious injury or death from falls, electric shock and scaffold collapse. Dong Xing had previously been issued with one infringement notice, eight prohibition notices and nine improvement notices between 2011 and 2016. [Read more ►](#)

The prosecution highlights how a history of repeated enforcement activities against a business increases the likelihood that charges will eventually be filed. This is true of most regulators – not just WorkSafe. Businesses should take any regulator enforcement action seriously and make the improvements needed to prevent it happening again. This will avoid a record of multiple enforcement measures that

may eventually convince the regulator that it has little choice but to prosecute to secure compliance.

It also pays to keep in mind that insurers usually require disclosure of information about enforcement activities at proposal or renewal. It is not known if Dong Xing had insurance, but the previous notices might have resulted in insurance conditions being breached. Providing information to insurers about enforcement activities up front will help to avoid awkward questions about coverage later.

What superheroes need to know about health & safety

"Spider-Man" and "The Incredible Hulk" could have avoided the angst that goes with being a superhero if they had followed good health and safety practices, according to the US Government's [NIOSH Science Blog](#). The Science Blog explains that exposure to mutant arachnoids and high-dose gamma radiation can be eliminated or minimised by taking appropriate safety precautions. It also provides useful advice on managing other hazards in the demanding superhero sector (and other sectors).

Voluntary organisations as PCBUs under HASWA

Persons Conducting a Business or Undertaking (PCBUs) are the key duty holders under HASWA. HASWA defines a [PCBU](#) very broadly. A PCBU does not have to be a business; does not have to be conducted for profit or gain; and can be an individual. A PCBU also includes a volunteer group or sports club that employs any person to carry out work for it.

National MP Harete Hipango unsuccessfully sought to amend HASWA so that voluntary groups that employed or engaged workers to carry out paid work for less than 100 hours per week were no longer defined as PCBUs. This would have meant fewer voluntary groups had duties

under the Act. But on 3 April 2019, Parliament declined to send the [Health and Safety at Work \(Volunteer Associations\) Amendment Bill](#) to its second reading and the Bill was defeated.

It is important that voluntary groups clarify whether they are a PCBU or not. If they are a PCBU, VL recommends they become familiar with their duties and take out appropriate [statutory liability insurance](#) to provide cover against unexpected legal action by regulators. WorkSafe provides information on [who and what is a PCBU](#) and guidance for [PCBUs that engage volunteers](#).

Thinking broadly about risks – keeping an eye on risks to the public as well as workers

A PCBU's duties under HASWA extend beyond its workers and the immediate workplace. Businesses need to think widely about everyone who could be put at risk of harm from their work both inside and outside the workplace.

In a recent prosecution, a South Auckland construction company was fined \$100,000 after an elderly man died following a fall from his mobility scooter on the footpath outside a building site. The footpath was damaged during work on the site.

The fine was reduced from a starting point of \$550,000 for mitigating factors and financial circumstances. The business was also ordered to pay reparations of \$100,000. [Read more ►](#)

WorkSafe publishes a [health and safety "toolkit"](#) for small construction sites which covers the basics of managing safety and health during construction work. It's a good place for businesses to start. The UK HSE also provides [useful information](#) on protecting the public during construction work.

Health, safety and other statutory liability news in brief

Spark fined \$675k for misleading consumers

Making false or misleading representations in its customer invoicing, and when making a \$100 credit offer to new customers, has led to a large fine for Spark. [Read more ►](#)

Construction Sector Accord signed by Government and industry

The construction industry and Government will work together to further four priorities in the construction industry – expanding workforce capability, rebalancing risk, improving health and safety and boosting the supply of affordable and durable housing. [Read more ►](#)

Maritime NZ prosecutes Panama-flagged ship's Captain

The crew of a Panama-flagged ship continued to work unsafely at height despite a warning from a Maritime Officer. The Captain of the ship was charged and fined \$6,000. [Read more ►](#)

Seattle crane collapse kills four

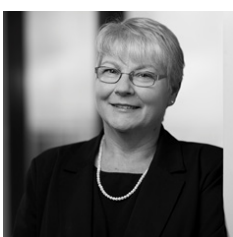
A crane fell from the roof of a building in Seattle, killing four and injuring another four people. The US Department of Labour are investigating. [Read more ►](#)

Gasfitter sentenced to community detention

Installing a gas heater incorrectly led to a sentence of four months community detention for a gas fitter in Tauranga. The prosecution was taken by WorkSafe under the Gas Act after the heater caught fire and caused extensive damage to a house. No one was hurt. [Read more ►](#)

UK fairground ride inspector prosecuted after crash

In June 2016, a roller coaster at Strathclyde, Scotland, derailed causing serious injuries to some of those on board. An investigation by the HSE found the ride inspector had certified the ride without sufficient evidence of it being properly examined. [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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