

# The Safe Side



Developments in health and safety from New Zealand and around the world

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When four people were killed on what should have been a fun-filled day out at Dreamworld, it captured headlines around the globe. Ardent Leisure Limited, the owners of Dreamworld, have now pleaded guilty to three charges laid by the Queensland health and safety regulator. We look at the background to the tragedy in this issue. We also cover the alarming rise in acute work deaths in New Zealand in 2019, the use of PPE at work and a recent prosecution by Maritime New Zealand. And with the COVID-19 pandemic continuing to surge around the world, we look at WorkSafe's reluctance to investigate the infection of seven nurses at Waitakere Hospital in April this year.

## Work deaths rise by a staggering 70% in 2019

Last year saw the highest number of acute work deaths in New Zealand since 2011 and the devastating loss of life in the Canterbury earthquake. [WorkSafe](#) figures show that in 2019, 108 people were killed as a result of an injury from work. This included workers who died while working and members of the public who died after being harmed by someone else's work activity.

The 2019 death toll was a massive increase on the 63 fatalities recorded in 2018. Even excluding the 21 deaths from the Whakaari/White Island eruption, the 2019 figure saw an almost 40% increase in work-related deaths from the year before. Add in the Whakaari deaths, and the percentage increase was over 70%.

Unsurprisingly, the arts and recreation services sector, which includes tourism activities, was the most dangerous sector with 31 deaths. A further 24 deaths occurred in the agriculture sector and 15 occurred in the transport, postal and warehousing sector. Thirteen people were killed in construction and nine in forestry and logging. Given the small number of people working in forestry, this remains by far our most dangerous industry by fatality rate per worker. Six people were killed in the manufacturing sector.

Overall, the numbers suggest that the encouraging improvements in health and safety performance that followed the introduction of new Act have now been undone.

## Using PPE to protect workers and visitors

Personal Protective Equipment (PPE) has an important role to play in keeping workers and visitors safe. PPE includes items like hard hats, high visibility clothing, eye protection, height harnesses and safety boots.

Although wearing PPE is often the first safety control we think of, it should only be used when risks cannot be adequately controlled in other ways. For example, a high-vis vest should not be the main or only control used to protect workers from mobile plant if other controls, such as temporary or permanent physical barriers and a traffic management plan, are reasonably practicable to implement. PPE might, however, be a good secondary control.

If PPE is used in a workplace, the [Health and Safety at Work \(General Risk and Workplace Management\) Regulations 2016](#) set out the extensive legal obligations of the PCBU to those using it. These include that the PCBU must provide PPE at no cost to the workers (unless another PCBU has done so) and ensure workers and visitors wear or use it. Workers and visitors are also legally obliged to use and wear

PPE in accordance with any reasonable instruction by the PCBU. WorkSafe has published useful guidance on both [PPE and protective clothing](#).



## Maritime New Zealand is "pushing the boat out" with its prosecutions under HASWA

Maritime New Zealand (MNZ) has shown a willingness to prosecute a range of duty holders under the Health and Safety at Work Act (HASWA) even when an incident results in very minor or no harm.

In our last [issue](#), we reported on the prosecution of a worker by MNZ after an excavator fell from a crane. No one was hurt.

In a more recent case, MNZ [prosecuted](#) a company's director as well as the company and the vessel's master after a grossly overloaded fishing vessel sunk. The MNZ Central Region Compliance Manager commented: "It is ... important people understand that company officials, not only the skipper, are responsible for the safety of all the people on board a ship or a boat."

The prosecution arose after the vessel foundered while returning from fishing off the Kaikoura Coast. The sea and weather conditions were good, but the vessel was so low in the water that its back deck flooded. All aboard were safely rescued. The three parties who were prosecuted paid combined fines of NZ\$449,500.

## Dreamworld coronial findings highlight numerous safety failings

Many of us have enjoyed visiting the theme parks on Australia's Gold Coast and were shocked by the horrific deaths of four patrons at Dreamworld on 25 October 2016. Those who died were in a raft on the Thunder River Rapids Ride, an attraction targeted at families.

The tragic events unfolded after a pump providing water to the ride failed and the water levels suddenly dropped. As a result, Raft 6 got stranded on the steel supports that were normally submerged at the end of the conveyor unloading area.

Raft 5, which was behind Raft 6, had already travelled through the water course with six people on board before the water level fell. It was picked up by the conveyor at the end of the ride and moved towards the unloading area. It then collided with the stranded Raft 6 and was pulled vertically into the conveyor mechanism.

The two children on board were able to escape to safety but the remaining four adults died after either being trapped in the raft or ejected into the water beneath the conveyor.

The Queensland Coroner completed a comprehensive [investigation](#) into the tragedy. He found that the design and construction of the conveyor and unloading area posed a significant risk because of the nip-point at the head of the conveyor, the effect of a water pump failure and the absence

of an emergency stop for the conveyor on the main control panel.

No holistic risk assessment was ever undertaken on the ride even after numerous incremental and ad hoc modifications were made. Engineering controls such as an interlock between the conveyor operation and a water level sensor could have averted the tragedy but there was a reliance on administrative controls like procedures instead. But the procedures were ambiguous and poorly worded, and the training for staff was inadequate.

The Coroner also found there was ample evidence of the potential for a disaster of this nature occurring. Insufficient notice was paid to very similar earlier incidents and lessons were not learnt.

Even the regulator was found to have failed, with the Coroner observing that it held unjustified trust as to the sufficiency of the safety and maintenance systems in place at Dreamworld to manage high risk plant.

In July, [three charges](#) were filed against Dreamworld's owner, Ardent Leisure Ltd, under Queensland's Work Health and Safety Act. Ardent Leisure has now pleaded guilty and face a maximum fine of AU\$4.5m.

## WorkSafe fails to investigate potential failures to keep nurses safe from COVID-19

In April 2020, seven nurses contracted COVID-19 after Waitakere Hospital agreed to accept the transfer of six COVID-positive residents from St Margaret's Hospital and Rest Home in Te Atatu, Auckland. One nurse was hospitalised as a result.

WorkSafe says that keeping workers healthy is as important as keeping them safe. So it is a surprise that WorkSafe chose not to look into any potential failures in what was a work context.

A subsequent Waitemata DHB report identified several issues that contributed to the infections. These included that nursing staff were unable to communicate with other staff outside the patients' rooms. This meant they had to frequently change out of PPE to leave the room – an action

with a high risk of viral contamination. There were also problems with the usability of the PPE and changes in types of PPE provided.

In spite of these findings, WorkSafe still did not investigate. The NZ Nurses Organisation said that they: "... and other unions are very concerned that health workers aren't afforded that level of investigation from this ... regulator when things related to safety go wrong...".

WorkSafe's position is, and has been, that COVID-19 is primarily a public health matter. However, we may see that position change if the regulator comes under further pressure from Unions or the government to protect workers and their families during the current resurgence.

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