

# The Safe Side



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

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*This month we have three articles about health and safety leadership, including two covering recent prosecutions in Western Australia and the UK that resulted in jail terms for a director and a site manager. We also look at a new enforceable undertaking in the maritime sector and the sentencing of a steel company after a serious workplace injury. Finally, we provide an update on the latest data on work fatalities.*

## Health and safety leadership matters

Convictions of directors and officers for failing to comply with the duty to exercise due diligence have been rare since HASWA came into force in 2016. However, this reprieve may be coming to an end. WorkSafe filed charges against [two directors](#) in relation to the Whakaari White Island eruption and a sentencing for a director charged by [WorkSafe](#) is due to occur shortly.

Aside from limiting their personal legal liability, there are also other persuasive reasons why a leader's commitment to health and safety matters. The UK's [HSE](#) has identified strong and active leadership from the top as one of three essential principles that underpin good health and safety performance. A PCBU is less likely to have serious health and safety incidents that could result in prosecution if its leaders instil a strong culture of health and safety in the workplace.

[SafeWork Australia](#) also says there is strong evidence that a PCBU's performance is improved when organisations address health and safety risks along with other important business risks. And as recently highlighted at the [Ports of Auckland](#), poor health and safety outcomes may invite unwelcome scrutiny of a leader's performance and that of the PCBU.

The good news is that there is a wealth of accessible guidance for any business leader interested in enhancing their personal safety leadership and their PCBU's overall health and safety. The NZ Business Leaders Health & Safety Forum has many useful [resources](#). The Institute of Directors New Zealand has published [guidance](#) on health and safety governance. And WorkSafe's [publications](#) include a guide for small-to-medium sized business owners and company directors.



*"It's some new health & safety at work directive."*

## Record prison term for health and safety offending in Western Australia

A [Western Australian company director](#) has become the first person to be sentenced to a prison term under the State's health and safety laws following the death of a young worker and a serious injury to another worker in 2020. The director's company was also convicted of gross negligence and fined \$550,000 on top of a further \$55,000 for related health and safety failures.

The director pleaded guilty to a charge that the company's gross negligence offence occurred with his consent or was attributable to his neglect. He was sentenced to a term of imprisonment of two years and two months with an immediate term of eight months and the remaining term suspended. This is the longest term of imprisonment ever imposed for work safety and health offending in Australia and the longest immediate sentence.

The convictions arose after two workers were installing roof sheets on a large machinery shed being constructed on a farm. A strong wind or willy-willy lifted a sheet and caused both workers to fall. The young man who died fell nine metres. The second worker fell around seven metres and suffered multiple fractures of the pelvis, hip, wrist and ribs.

The WorkSafe WA Commissioner commented that the culpability for a work-related death did not get much worse than in this case. The director "... completely failed in every sense to provide a safe workplace for his employees, and as a consequence a young man lost his life and a family lost a loved one", he said.

In the New Zealand context, broadly similar offending carries a maximum prison term of five years.

## Company ordered to pay almost \$370k after a falling steel package seriously injured worker

A [Hawke's Bay steel plate cutting company](#) has been fined \$275,000, and ordered to pay reparations of \$87,498 and Court costs of \$7,381 following an incident which resulted in a worker having his right leg amputated below the knee.

The injured worker was moving a 2,289kg package of steel using his body weight to counterbalance the load. As he lowered the package to the ground, the package tilted and slipped out of the strop holding it. It fell trapping his right ankle and foot.

WorkSafe's investigation found that the documentation for the task was generalised and parts outdated and did not include a safe system of work for slinging. An earlier near miss involving the victim should have warned the business of the need for a review and update of the system.

WorkSafe's information on writing health and safety documents for a workplace is available [here](#).

## Workplace fatality numbers remain stubbornly high in spite of lockdowns

WorkSafe [data](#) shows that in spite of the COVID-19 lockdowns and the resulting fall in GDP during 2020, work fatalities remained broadly consistent with earlier years. Sixty-six New Zealanders lost their lives in work related incidents in 2020 compared to 63 in 2018. This number was down on the 110 people who died in 2019 – an especially tragic year that included the deaths resulting from the Whakaari White Island eruption.

The most lethal industry remains forestry and logging with a fatality rate of 48.17 per 100,000 people in employment. Somewhat surprisingly, the next most dangerous sector was electricity, gas, water and waste services with a fatality rate of 21.44. Next came fishing, hunting and trapping with a fatality rate of 20.01 and mining with 15.28. Agriculture came in fifth with a fatality rate of 14.86.

In terms of numbers of fatalities, agriculture topped the table with 17 people dying from March 2020 to February 2021 – by far the highest toll across any sector. Construction came next with seven fatalities, then transport, postal and warehousing with five. Electricity, gas, water and waste services and health care and social assistance had four fatalities each.

Hawke's Bay and Waikato had the highest rates of fatalities, perhaps reflecting the prevalence of the agriculture and forestry industries in the regions. Auckland had the highest number of fatalities, with 16 deaths over the year.

By far the most common accident type resulting in a fatality was a vehicle incident. This accounted for 27 fatalities. Information on [site traffic management](#), [seatbelts at work](#) and [vehicles on farms](#) is available on the WorkSafe website.

The next most common accident types were being hit by falling objects (5 fatalities), being hit by moving objects (4 fatalities) and falls on the same level (also 4 fatalities).

Given that fatalities will almost always be investigated, and that investigations will sometimes result in prosecutions, it makes sense for any business operating in these sectors or exposed to the potential for these accident types, to have [Statutory Liability insurance](#) with a sufficient limit of indemnity to cover investigations, legal costs, court costs and reparations.

## Interislander ferry incident results in enforceable undertaking for KiwiRail

In April 2019, the First Engineer on the interislander ferry Kaiarahi slipped on the floor of the hydraulics room, breaking his femur in two places. As a result, he needed surgery and was off work for more than 15 weeks.

[Maritime New Zealand](#) (MNZ) found that the floor of the hydraulics room had insufficient non-skid surfacing and there was no anti-slip grating in place. As a result, MNZ filed a charge against KiwiRail in April 2020. It then accepted an enforceable undertaking which involved KiwiRail spending \$332,746 plus financial amends and the costs of support to the victim.

The majority of the spend is providing \$250,000 to Marlborough District Council to implement a Marlborough

Sounds-wide system for real time monitoring of tides, currents and water depths. It will be available free of charge to both commercial operators and recreational boaties.

A further \$51,500 will be spent on actions to manage slips on ships. These include developing and distributing an operational framework for friction testing on ships; continuing to carry out friction tests on ships and terminals and developing friction testing policy and procedures. The enforceable undertaking also encompasses the costs of rectification work carried out to install anti-slip surfacing and grating.

This is the second enforceable undertaking accepted by MNZ. A full copy of the EU is available [here](#).

## UK builder receives a jail term for failing to report a serious injury to a worker

A UK Court has sentenced a builder to 24 weeks imprisonment after he failed to report a serious incident at a construction site he was in charge of. An excavator at the site tipped over and trapped a worker's leg, resulting in an amputation. The HSE was only able to begin an

investigation more than eight months later when the victim complained. By this time crucial evidence relating to the cause of the incident was unobtainable and the work was almost completed.