

*The tragic deaths of two British tourists while off-roading in the South Island high country has led to a record fine for the tour company and a conviction for the Director. We cover the sentencing in this issue. In addition, we take a brief look at the concept of 'health and safety by design' as well as the duties imposed on designers by HASWA. We also have articles on two overseas prosecutions involving failures to manage risks that may not be top of mind for New Zealand companies when thinking about work health and safety – a failure to manage fatigue and injuries to workers exposed to hand and arm vibration for prolonged periods. Finally, we provide a link to new guidance on managing the risks of solar UV radiation when working outside.*

## Adventure company given record fine; director convicted following the death of two tourists

A tour operator has been fined a record \$595,000 after being [sentenced](#) for health and safety failings in the Timaru District Court.

In March 2019, two British tourists were travelling second from the front in a convoy of five side-by-side off-road vehicles along a track on the Kakanui Ranges. The track had a steep drop off on the right-hand side. The tourists were part of a bespoke tour group run by an adventure operator. The tourists' vehicle over-balanced causing the men to fall more than 80 metres. They died instantly.

WorkSafe's investigation identified serious and multiple failings. The tour group had undertaken some basic training before the trip started, but this had only lasted around 15 minutes and the practice terrain in no way resembled the hazards that the group would experience on the track.

In fact, the adventure operator had not actually travelled the route in a side-by-side vehicle and had only assessed the terrain by helicopter. The operator had been explicitly denied access to the farmland that the fatal incident occurred on. Added to this, the company was not a registered Adventure Activity Operator despite knowing this was a legal requirement under the Health and Safety at

Work (Adventure Activities) Regulations 2016. Registration would have meant the company's safety management systems were reviewed by third party auditors to ensure they meet the Adventure Activity standards.

To VL's knowledge, the fine of \$595,000 is the highest ever imposed on a defendant under HASWA although the company is no longer trading and is expected to go into liquidation. [Ports of Auckland Limited](#) faced the previous record fine of \$540,000.

While the judge would have ordered reparation in the vicinity of \$230,000, due to the financial position of the company and Director, the only reparation ordered was \$100,000. This was the amount the Director had been able to set aside from his personal finances. In addition, the Director would have faced a fine of \$30,000 but due to his financial position and the priority given to paying reparation, no fine was imposed on him.

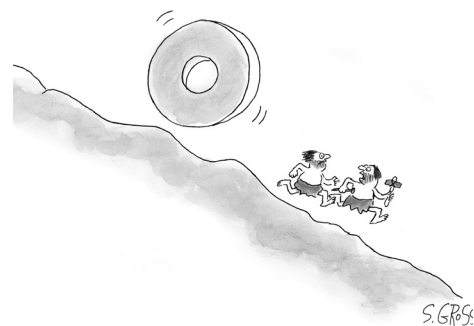
The company was also convicted and discharged under the Health and Safety at Work (Adventure Activities) Regulations 2016 for providing an adventure activity when not registered or exempt. Information on what activities WorkSafe considers adventure activities can be found [here](#).

## 'Health and safety by design' – managing risks right from the start

WorkSafe describes '[health and safety by design](#)' as the process of managing health and safety risks throughout the lifecycle of structures, plant, substance or other products. It says designers are in a strong position to make work healthy and safe from the start of the design process.

PCBUs in charge of design have extensive duties under HASWA including to, so far as reasonably practicable, make sure that structures, plant and substances are without health and safety risk, as well as to test and to provide adequate information.

There may also be other relevant legislation that affects health and safety e.g. the Gas Act 1992 and the Building Act 2004. In this case, a designer will need to follow all the obligations imposed under the various Acts. Notably, while other legislative requirements may be considered when



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deciding if health and safety duties are being met, duty holders may need to do even more than what other legislation requires to meet their HASWA duties.

## Conviction for death of roadside assist worker highlights the need to manage fatigue risks

The Australian Royal Automobile Club of Victoria (RACV) has been [convicted and fined \\$475,000](#) following the death of a roadside assistance driver in a fatigue-related crash in 2018.

In the early hours of 10 March 2018, a driver who was sub-contracted to RACV to operate a roadside assistance service was killed when he ran off the road and struck a tree. Evidence at the crash site indicated he had fallen asleep at the wheel. At the time of the fatal crash, the driver had been on call for 89 hours and had been working for 17 hours from the first call-out he had received in the morning.

The Court was told that the RACV did not provide training or insist contractors trained their workers in the risks of fatigue or have a safe system of work related to fatigue. It was reasonably practicable for the RACV to provide information to contractors about the risks of fatigue, ensure there was training in how to prevent fatigue and suggest

policies and procedures to help contractors minimise the risks.

WorkSafe Victoria said after the conviction: "Having fatigue management systems in place and communicating them with workers and contractors are simple steps that could save a life." The employer of the deceased driver is also facing charges over the incident.

In 2018, [a New Zealand company](#) was also convicted after fatigue was identified as the most likely cause of a fatal road crash. The tractor driver who died had worked 197.25 hours in the two weeks leading up to the incident. He logged a 16.75-hour day before driving the tractor home in preparation for next day's work. The crash occurred at 2.45am.

Information on managing fatigue is published by [WorkSafe NZ](#) and [WorkSafe Victoria](#).

## UK glazing company prosecuted for failing to control the risks of vibrating tools

A [UK company](#) that installs and repairs glass windscreens and side windows to buses, coaches, motor homes and trains has been fined £211,290.04 (including a victim surcharge of £70) and ordered to pay costs of £11,120.04 for failing to adequately control the risk to its employees from using vibrating tools.

Employees of the company were required to use oscillating and reciprocating saws, known as Fein cutters, to remove the thick adhesive that had been used to secure the windows in place – sometimes for their entire shift.

The UK regulator, the Health and Safety Executive (HSE), received reports of 30 employees at the company being diagnosed with hand arm vibration syndrome (HAVS). The HSE said that many of the 30 technicians were relatively young and sustained life-changing permanent injury to their hands which means they can no longer work with vibrating tools. Most now suffer constant pain and sensitivity to cold and struggle with everyday tasks.

The HSE's investigation found the company failed to adequately assess the risk to employees from exposure to

hand and arm vibration. They did not monitor the use of the Fein cutters and had not implemented measures to control exposure. There was no tool maintenance programme to ensure tools were working effectively so vibration levels were kept to a minimum.

The risks of being exposed to hand and arm vibration are probably not widely recognised in New Zealand but failure to manage them could lead to a prosecution by WorkSafe. Symptoms of HAVS include loss of feeling in fingertips, fingers going white – especially in cold weather, tingling and numbness in fingers, loss of strength and pain. The symptoms can come and go, but with continued exposure to vibration, symptoms can become prolonged or permanent. As a result, workers may experience pain, distress and disturbed sleep. They may also be disabled and not able to do simple tasks like opening jars or using a phone.

Information on managing the risks of hand and arm vibration can be found on the [WorkSafe website](#). In addition, the [HSE](#) has extensive resources including a calculator and guidance on health monitoring.

## Fishing boat skipper fined \$1,500 for failing to notify Maritime NZ of a serious injury

HASWA is not the only Act that requires notification after an injury accident. The Maritime Transport Act places an obligation on masters of ships to notify all accidents that result in serious harm. A skipper's failure to do so has led to a \$1,500 fine and an order to pay Court costs of \$130.

The [prosecution](#) arose after a crew member on a fishing boat had two fingertips severed in a pulley while working. Maritime NZ notes that further court action is proceeding against others involved in the incident.

## New fact sheet on solar ultraviolet radiation risk

With summer fully upon us, SafeWork Australia has published a useful new [fact sheet](#) on how to manage the risks of solar ultraviolet radiation (UVR) in the workplace.

Exposure to solar UVR is a risk for anyone who works outside. Solar UVR is not only a hazard when working in

direct sunlight, it can also be reflected off certain materials such as concrete, metal, snow and sand.

UVR is a known carcinogen like asbestos and tobacco and the risks associated with exposure to it must be managed by PCBU's.