

In this issue, we cover three prosecutions involving Councils. Two District Councils were sentenced for breaches of the Health and Safety at Work Act (HASWA) last month - one after the tragic death of a child; the other after a giant inflatable slide collapsed with a dozen people on it. On the other side of the coin, the Waikato Regional Council prosecuted a farming company for the unlawful discharge of dairy effluent under the Resource Management Act. In addition, we look at yet another WorkSafe prosecution for failing to manage machinery hazards and a UK case that resulted in a substantial £1 million fine after a worker was killed by malfunctioning equipment. Finally, we have an article on the new port sector health and safety plan that resulted from a novel collaboration between unions, ports and stevedoring companies.

District Council sentenced after giant inflatable slide collapse

In December 2020, a giant inflatable slide collapsed at the Whangamatā Summer Festival. A dozen people, mostly children, fell from heights of up to 12 metres. One adult broke both his ankles and has since required 11 surgeries for his injuries.

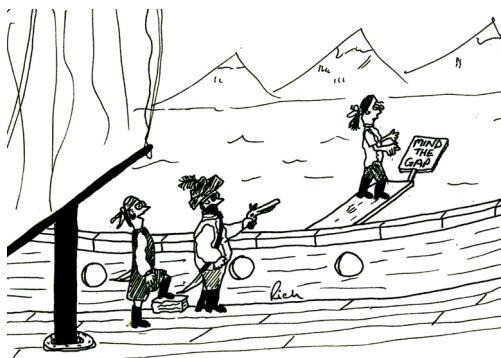
The [operator](#) was sentenced in August 2022 for its role in the incident and paid a fine of \$350,000 and \$40,000 in emotional harm reparations. The [Thames Coromandel District Council](#) was also prosecuted for failing, so far as was reasonably practicable, to consult, co-operate with and co-ordinate activities with the operator. This month the Council was also sentenced and ordered to pay reparations of \$10,000. No fine was imposed.

The WorkSafe investigation found that the Council had authorised the operation of the slide using an old form

which didn't require confirmation that the slide met safety standards and failed to do any of the checks recommended by its own staff. After the incident, expert reports found the slide was electrically unsafe, had air leaks through holes and seams, and inadequate anchoring to the ground. The operator also had a poor safety record.

The prosecution of the Council again demonstrates the broad reach of HASWA. WorkSafe warned that businesses that consent and permit events and equipment cannot absolve themselves of responsibility for health and safety when things go wrong. All parties involved in such arrangements can share [overlapping duties](#). And while a business can enter into reasonable agreements for managing health and safety with other businesses, they must still monitor the other business to ensure they do "what is required".

Collaborative port sector health and safety plan released



"Garrh, Cap'n, it's health and safety gone mad."

The Port Health and Safety Leadership Group, made up of unions, ports and stevedoring companies, the Port Industry Association, Maritime NZ and WorkSafe, has just released a multi-year [Port Sector Insights Picture and Action Plan](#) to make ports safer.

The Plan was developed after the deaths of two port workers in 2022. New Zealand's rates of death on ports are twice or three times those of the United Kingdom and Hong Kong. Compared to Australia, New Zealand has a similar number of fatalities, but Australia moves significantly more cargo.

The [Plan](#) pulls together information from fatalities, injuries, incidents, near-misses, regulatory notifications, investigations and assessments, worker surveys, and worker interviews and workshops to build a picture of what drives serious harm on ports. It lays out six initial actions that are focussed on addressing some of the issues identified:

- Putting in place an Approved Code of Practice covering the loading and unloading of cargo - some of the highest risk activities in ports.
- Implementing guidelines to reduce the risks associated with worker fatigue.
- Extending Maritime NZ's HASWA designation to cover the whole port.
- Improving incident reporting, notifications, insights and learning across the Ports, so the sector can get a better real time understanding of harm and take necessary action.
- Improving training and workforce issues.
- Ensuring there are easier ways of sharing good practice that the sector is doing here, or overseas, to encourage continuous improvement.

Alongside these actions, a multi-year programme of work, in conjunction with the sector, will be developed over 2023.

Inadequate machine safety arrangements result in conviction for bakery

A [West Auckland bakery](#) has been convicted and fined \$36,000 after two workers sustained serious injuries to their hands. The incidents occurred 6 months apart but share many similarities.

In January 2021, a worker had four fingers severed when her hand got caught in a seed grinding machine. The worker had never previously used the grinder or received any training on its operation. The victim has since had seven surgeries on her hand and remains off work.

During its investigation, WorkSafe found that the grinder's safety guard had not been replaced when it broke off 18 months prior. There was no safe operating procedure for the machine, the worker was unsupervised, and the only training given to her was immediately prior to the incident.

In June 2021, another worker had her fingertip sliced off while using a dough dividing machine. The fingertip could

not be reattached. WorkSafe again found that this machine did not have any safe operating procedure, and its guillotine was freely accessible. There was no inspection or maintenance undertaken, and the victim was also inadequately trained.

After sentencing, WorkSafe said the incidents were entirely avoidable, but to harm a second worker was nothing short of "reprehensible" when the company was already on notice of the harm that deficient machine guarding could cause.

There is a wealth of information on machinery hazards and controls available from WorkSafe, including the "[Safe use of machinery guidelines](#)" and specific information about using [dough machinery](#). In addition, you can read more about machine safety in [Issue 42](#) of *The Safe Side*.

Council sentenced following three-year-old's tragic death in wastewater pond

In January 2019, three-year-old Lachlan Jones drowned in a Gore District Council wastewater pond. The Council was [sentenced](#) last month for its part in the tragedy, for failing to design, install and maintain fencing to prevent children from accessing the ponds and to deter other members of the public from doing so.

The Court ordered the Council to pay reparations of \$110,000 but did not impose a fine due to the impact on ratepayers.

Sadly, figures show that since 2013, ponds, dams, and water bores have claimed the lives of 16 people. Five of

these were workplace fatalities. Most occurred on farms and half of the victims were children. The youngest of the 16 victims was aged just one year old.

WorkSafe New Zealand and Water Safety New Zealand are calling for greater care around ponds, dams, and water bores. WorkSafe says that farms are workplaces and often have water hazards which should be mapped out. Careful thought should also be given to fencing around play areas, animal pens, work areas and water spots. It says not everybody who comes onto a farm knows about the hazards that are present and farms are responsible for their safety.

RMA prosecution for dairy effluent discharges results in \$78k fine

A [farming company](#) has been convicted and fined \$78,000 under the Resource Management Act for unlawful discharges of dairy effluent into streams at their Raglan farm. The company also received a court order to install infrastructure to manage their effluent appropriately.

At sentencing, the Judge said that effluent management is a critical and fundamental part of farming and that a more robust system of effluent management would have ensured the offending did not occur. He also determined that the farming company was "... highly careless in its approach to effluent management on the farm."

The prosecution arose after Waikato Regional Council

compliance staff found that effluent storage facilities were discharging effluent into two separate tributaries of Te Mata Stream. The subsequent investigation revealed a lack of storage capacity, infrastructure deficiencies and poor management practices.

Waikato Regional Council warned that: "Effluent management rules have been in place in this region for a quarter of a century. There simply is no excuse for farms to not have appropriate infrastructure and management in place to safeguard against negatively impacting on the environment."

UK concrete company fined £1M after death of 24-year-old worker

A [UK concrete company](#) has been fined an eyewatering £1,000,000 and ordered to pay costs of £47,521.08 after a worker was killed when his head was trapped in the jaws of a metal grab. The incident occurred when the worker was trying to fix a problem with the grab while it was being used to unload a concrete building product from trailers.

The UK HSE investigation found that the company did not have a safe system of work for the use of the grab and had

not carried out a risk assessment to identify risks for its use. In addition, both the grab and a forklift truck being used at the time were in poor condition. The company failed to ensure the equipment had been maintained in efficient working order or in good repair. Neither should have been in service at the time of the incident.