

Welcome to our first issue of *The Safe Side* for 2024. This month, we cover five recent sentencings that resulted from prosecutions taken by WorkSafe New Zealand. Three of the prosecutions arose after the tragic deaths of two young men in separate incidents in the construction industry. Another came about after a worker was almost buried alive when a trench collapsed around him. The last involved no injury, but serves as a reminder that repeated breaches of the Health and Safety at Work Act may see charges filed even if no one is hurt. We also have an article about Australia's recent ban on the engineered stone often used in kitchen benches due to the severe harm it can cause to workers when it is ground, cut and polished.

## Three construction companies ordered to pay more than \$675,000 after two worker deaths

Three companies working in the construction sector have been sentenced for two separate incidents that each resulted in the tragic death of a young worker.

In the [first incident](#), a 21-year-old was killed when the steel beam he was removing fell and killed him on a Newmarket construction site. The young man was standing on a stack of five wooden pallets to use an angle grinder when the beam fell.

WorkSafe said the workers at the site had devised an ad-hoc way to get the job done when their original method could no longer be used. Unfortunately, they did not have access to safety-critical information about the security of the 500-kilogram beam.

The incident highlights the need to stop work when situations change, and carry out effective risk assessments, in consultation with experts where necessary, to develop a new safe work method. At sentencing, the company was fined \$180,000 and reparations of \$110,000 were ordered.

In the [second incident](#), a 19-year-old apprentice was killed in March 2022 when timber framing weighing 350 kilograms fell on him at a residential building site in Ōmokoroa.

A WorkSafe investigation found the risk was heightened by the framing being manually installed around the site, and a temporary support brace being removed just prior to the fatal incident. When one frame knocked another, it fell on the teenager.

The employer of the victim provided building labour for the main contractor on site, and both were charged in relation to the death. WorkSafe said the companies should have consulted with each other about an agreed framing installation plan and that a mechanical aid (such as a Hiab crane truck) should have been used to lift the framing into place.

At sentencing, the employer of the victim was fined only \$30,000 due to financial incapacity, and the main contractor was fined \$210,000. Reparations of \$130,000 were ordered to be paid to the victim's family, along with \$15,072 to his co-worker – a fellow apprentice.

A number of serious injuries while handling, installing, and adjusting large or heavy frames and trusses prompted WorkSafe to put out a [safety alert](#) on the topic in 2019. It strongly advises PCBUs to use a crane to assist with their installation.

## Sentencing after worker buried in trench on rural property

In February 2021, a worker was buried in a trench collapse so that only the top of his head was visible. As a result of this horrific incident, his employer was given a fine of \$275,000 and ordered to pay reparations of \$45,000 at sentencing last month.

The [prosecution](#) arose after two employees of a drainage company were digging a trench at a farm near Te Kuiti. One of the workers was in the trench, which was three metres deep and two metres wide, when a side wall gave way and he was engulfed by the collapsing ground.

His co-worker used his hands to clear the dirt away so the victim could breathe, and then used a spade until he could pull him out. The victim suffered a collapsed lung, a broken rib cage, a broken sternum, and a broken collarbone. He now also lives with post-traumatic stress disorder (PTSD) because of the incident.

A WorkSafe investigation found the trench had been built with a flat floor and steep vertical sides, and was not shored up with shields or battered to a safe slope to keep the sides stable. There had also been no geotechnical assessment of the site to check the soil stability before work began.

In addition, the company did not have a safe system of work in place for the job, and did not provide enough information, training, or supervision to protect workers from the risk of a trench collapse. The company also did not notify WorkSafe, which they are required to do for any excavation deeper than 1.5 metres where a worker intends to be in the trench.

The safety standards around trenching are well-known and have been in place for many years. You can read more about them, as well as general advice on excavation safety, in WorkSafe's [Good Practice Guidelines](#).

## Tree feller fined for dangerous work practices although no one was harmed

A Nelson man has been convicted and fined \$56,000 after he carried out tree felling directly adjacent to State Highway 60 without any warning signage or traffic management in place. Fortunately, no one was hurt.

WorkSafe said the man should have taken several steps, including not felling trees within two lengths of a public road, putting in place temporary traffic management controls with the authorisation of the Road Controlling Authority and ensuring all workers were adequately trained. He was also required to notify WorkSafe before he began the tree felling.

It is highly likely that the decision to prosecute the man and

the sizable fine was influenced by the long history the man had with WorkSafe. This included four Prohibition Notices and 28 Improvement Notices since 2013 for unsafe tree felling, failing to notify of tree felling work, workers having inadequate qualifications and having an insufficient health and safety system. He was also convicted in 1998 for failing to ensure the safety of an employee.

At sentencing, the Judge was critical of the man's dismissive attitude, commenting that 'you are a person who has put your concerns around financial costs involved in completing work ahead of important safety considerations.'

## Australia bans the use of engineered stone to protect worker health



*'Health and Safety'. Who'd have thought it could be so important?'*

In a world first, the engineered stone used in many kitchen benchtops will be banned in Australia to protect the health and safety of workers.

On 13 December 2023, the [Australian Commonwealth, state, and territory governments](#) unanimously agreed to prohibit the use, supply, and manufacture of all engineered stone. The ban will start on 1 July 2024 in most states and territories.

The decision followed a report from [Safe Work Australia](#) which found that rates of silicosis and silica-related diseases in Australian workers have risen substantially in recent years, with a disproportionate number of diagnoses in engineered stone workers.

The report also noted that there is no scientific evidence for a safe threshold of crystalline silica content in engineered stone, or that lower silica content engineered stone is safer to work with.

Interestingly, Safe Work Australia said that while silicosis is preventable, health and safety laws were not protecting workers due to a persistent lack of compliance with obligations and responsibilities under the laws across industry at all levels.

Silica is a naturally occurring and widely abundant mineral found in most rocks. Silica dust or respirable crystalline silica

(RCS) is generated in workplaces by mechanical processes such as crushing, cutting, drilling, grinding, sawing, or polishing of natural stone or man-made products that contain silica. RCS can penetrate deep into the lungs and cause irreversible lung damage.

If a worker is exposed to and breathes in RCS, they may develop acute silicosis within a few weeks or years after a short exposure to very high levels of silica dust. Accelerated silicosis can develop after exposures of 3 to 10 years to moderate to high levels of silica dust and causes inflammation, protein in the lung and scarring of the lung (fibrotic nodules). RCS can also lead to chronic bronchitis, emphysema, lung cancer and kidney damage. Many of these conditions are incurable, devastating, and may be terminal.

The issue is not unique to Australia. [Radio New Zealand](#) reports that as at the end of February 2023, 140 claims for accelerated silicosis had been lodged with New Zealand's ACC for assessment.

Unsurprisingly, work with engineered stone has also been on WorkSafe NZ's radar. In 2019, [inspectors](#) visited 113 businesses known to be working with engineered stone to ensure the risks were being managed and effective controls were in place to protect workers. A total of 118 notices were issued to 62 businesses. Follow up visits were planned for September 2020, although to date we are not aware of any prosecutions for a failure to manage the risks associated with the work.

In January this year, the [NZCTU](#) renewed its [earlier call](#) to the Government for a total ban on engineered stone in Aotearoa New Zealand. It is unclear whether any action will be taken in response.

There is [extensive guidance](#) on working safely with engineered stone including using a water suppression system, an on-tool dust extraction system or local exhaust ventilation. Some of the guidance has been translated into [different languages](#). You can also read more about the risks of working with engineered stone in issues [9](#), [25](#) and [46](#) of *The Safe Side*.

This newsletter is published as part of Vero Liability's commitment to supporting better work health and safety outcomes for all New Zealanders. We want everyone to go home safe.

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