

Enforceable undertakings were introduced as an alternative to prosecutions under the Health and Safety at Work Act 2015 (HASWA). This month, we look at the latest enforceable undertakings accepted by WorkSafe New Zealand and Maritime New Zealand. One is with New Zealand Police and follows a shocking road crash that almost killed a mobile speed camera operator. The other is with a stevedoring company and came about when a worker was injured while loading a ship. We also cover the sentencing of an Auckland business after a customer was struck by a forklift, and a prosecution of a UK farmer after cows attacked two walkers and their dog. We round out this issue with an article on a recent speech by the new Minister of Workplace Relations and Safety about her intention to reform health and safety law.

WorkSafe and Maritime New Zealand accept new enforceable undertakings

Accepted enforceable undertakings (EUs) are less common than they were when HASWA first came into force, but are still occasionally agreed to by the regulators. This month, both WorkSafe and Maritime New Zealand reported on new EUs that have been recently finalised.

WorkSafe announced it had accepted an EU from [New Zealand Police](#) just a month before the matter was due to go to trial. With the charge now withdrawn, the trial will no longer go ahead. The victim, NZ Police Association and Police Leaders Guild all supported the EU as an alternative to continuing the prosecution.

The incident that led to the EU occurred in August 2021 when a parked mobile speed camera van was struck by a car travelling at an estimated 145 to 150 kmph on the Upper Harbour Highway at Greenhithe, Auckland. The car driver died in the crash, and the mobile speed camera operator, who was thrown from his van, suffered life-changing injuries including a skull fracture and scalp lacerations, lung injuries, and fractures to his ribs and legs. He spent a total of three months in hospital.

The mobile speed camera van was parked 4–5 metres away from the live lane when it was hit. Police said the crash was a deliberate act by a member of the public.

A WorkSafe investigation found that Police could have carried out a more effective risk assessment of the locations where the operators worked from, and required them to park safely behind motorway barriers and/or use seatbelts.

As a part of the [EU](#), Police will pay reparations to the injured operator as well as making more than a dozen changes to policy and processes. These include the delivery of an enhanced traffic camera operator induction and training package, implementing a framework for managing critical risks and ways to control them, and the creation of a dedicated critical risk team to embed the work programme.

In addition, Police will provide information on lessons learned and improvements made to New Zealand Transport Agency (NZTA) to help inform its operation of mobile cameras. In 2025, NZTA will begin operating speed cameras through a contracted third-party provider.

Police say most work on the EU will be run and managed internally so they could not easily quantify the money that will be spent implementing it. Police have committed to spending \$8,000 sharing the lessons learned from the incident at two road safety conferences.

Another regulator, [Maritime New Zealand \(MNZ\)](#), also recently accepted a new EU. This was with a stevedoring company, and followed from an incident in 2021 when a worker was pinned between a swinging container and another one behind him while loading 40 ft containers into the hold of a ship. The worker suffered a dislocated rib and closed rib fracture as a result of the incident.

MNZ's investigation found that the worker was wearing a harness without a safety line to work at height, and relied on clipping himself to lashing bars using a single lanyard/clip. This meant the worker was unable to move away from the swinging container, and into a safer position.

MNZ alleged that the company did not provide appropriate training to ensure workers were competent in managing the risks associated with working at height, that it did not implement appropriate fall protection equipment, or conduct an appropriate risk assessment and document the risks around working on board the ship.

The accepted [EU](#) will see the stevedoring company spend \$285,000. At worker level, this includes developing courses to improve the safety of those working at heights, and implementing changes to reduce risks from mobile plant such as pedestrian detection and fire suppression. At industry level, it will sponsor a study with Massey University into its operations to investigate and identify key sources of soft tissue injury. And for the community, it will improve training for first responders attending incidents at ports.

The company also paid the injured casual worker for emotional harm and any remaining consequential loss.

EUs remain an option for companies if they are charged with health and safety offences. If accepted, a conviction will not be entered although there is still likely to be publicity. You can read more in our deep dive into EUs, including the factors that appear to make an EU more likely to be accepted, in [Issue 36](#) of *The Safe Side*.

Company ordered to pay almost half a million dollars after customer hit by forklift

In August 2022, a 68 year-old woman waiting to collect whiteware from the customer collections area outside a large Auckland retailer was struck by a forklift. She was rushed to hospital with injuries so severe that her left leg had to be amputated below the knee.

WorkSafe charged the [business](#) after finding it had no effective traffic management plan to ensure moving vehicles and pedestrians were kept separate. WorkSafe found that forklifts were moving in and around pedestrians, delivering goods on a daily basis, but the site lacked any adequate systems to manage the risk of interaction between forklifts and pedestrians in the customer collections area.

At sentencing, the company was ordered to pay a fine of \$350,000 and reparations of \$141,502.12 to the victim.

After the incident, WorkSafe immediately issued two improvement notices to ensure a barrier was put between the pedestrian pathway and vehicles at the business' site, and to ensure procedures were in place for forklifts operating near pedestrians. Both notices were complied with.

WorkSafe said that forklifts are a known risk and that many people have died or been injured by forklift incidents. Risk assessments should consider anybody who could be harmed – which includes both workers and customers.

One-way systems, barriers, designated crossing points, and speed bumps or signage are some of the measures that can be put in place to protect workers and the public from moving forklifts. Guidance on managing work site traffic is available on the [WorkSafe website](#).

New Minister signals reform of health and safety law and regulations



Reform of health and safety law and regulations is one of the priorities of the ACT-National coalition agreement, says the new Minister for Workplace Relations and Safety, the Hon. Brooke van Velden. In a recent speech to the [Auckland Business Chamber](#), Ms van Velden outlined her concerns around the current legal framework, including that one of the things she hears consistently is that businesses "... just don't know what to do in order to comply." She went on to say that: "We need our health and safety system to be clear, to be understandable, and to be effective. I want our system to make sure businesses are focused on addressing the things that are causing workers harm, and not on compliance that serves no purpose."

The new Minister noted that Health and Safety at Work Act is now almost ten years old, and that she thought it is an appropriate time to take a step back and assess whether the health and safety system is fit for purpose. She said she wants to ask what the purpose of health and safety regulation is, how should risk and costs be allocated, what is working and what needs to change.

The Government will start with public consultation with more details released shortly.

UK farmer fined after walker severely injured by cows

A UK farmer has been fined after a woman was severely injured when she was attacked by cattle. The woman, a friend and their dog were walking across a field on a public footpath when they were cornered by the livestock. The victim was knocked to the ground and trampled, and then had to climb a tree to escape further attack. She was later airlifted to hospital suffering seven broken ribs, a broken thumb and life changing severe internal injuries.

The incident serves as a reminder of the risks to workers and the public from cattle, especially cows with calves.

The UK HSE has extensive guidance on [safety around livestock](#) and you can find further guidance on the topic in [Issue 49](#) of *The Safe Side*.

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