

*This month, we cover three prosecutions that resulted from health and safety risk management failures. The first came about after a forestry subcontractor was killed while harvesting trees, and led to the prosecution of two companies further up the contracting chain. The other two occurred overseas and sadly involved children, one of whom died. We also have articles on both the sentencing of the ex-Chief Executive of Ports of Auckland Limited after a groundbreaking health and safety conviction last year and WorkSafe's SafePlus free self-assessment tool, which is now available for businesses to download. Finally, in other statutory liability news, we cover an MPI animal welfare prosecution that saw an experienced farmer jailed for over two years.*

## Forestry subcontractor death results in two prosecutions up the contracting chain

In June 2022, a 39-year-old forestry subcontractor was killed while manually felling trees on a small block at Clevedon, south of Auckland. The trees were windthrown, meaning they had been bent and damaged by wind. WorkSafe and the forestry industry strongly recommend that these types of trees are harvested using machines.

The victim, who was a qualified tree feller, had been contracted by a logging company which was harvesting the 7,800 tonnes of pine in the block on behalf of forest managers. Both the logging company and the forest managers were prosecuted in relation to the subcontractor's death.

[WorkSafe's investigation](#) found the logging company had not properly reassessed its harvesting plan after nearby trees were cut by machinery and had not ensured safe felling practices were followed. The forest managers did not do enough to identify the ongoing risks to workers and should have been auditing the logging company more thoroughly.

At sentencing, the companies were ordered to pay combined fines and reparations of \$335,680.

WorkSafe commented that businesses cannot contract their way out of health and safety responsibilities. "Businesses must consult, cooperate and coordinate as part of a contracting chain. WorkSafe recommends health and safety is always built into contract management," its spokesperson said.

Forestry had the highest fatality rate of any sector in 2024, with 16.58 deaths per 100,000 workers. This is about [20 times higher](#) than the average for all sectors. Under its new strategy, WorkSafe is turning about 15% of its targeted frontline activity to the forestry sector because of the high rate of harm, particularly for young Māori from rural communities. Insufficient or unclear accountability for health and safety through the contracting chain has been identified as a key risk factor.

Guidance on health and safety obligations in contracting is available [here](#).

## WorkSafe SafePlus self-survey tool available for free download



**"So it's agreed then, we should move health and safety to the top of our agenda."**

[SafePlus](#) is a health and safety improvement toolkit for businesses. It was developed jointly by WorkSafe New Zealand, ACC and the Ministry of Business, Innovation and Employment (MBIE). The [free self-assessment tool](#) enables businesses to carry out a survey of staff to monitor and measure their organisation's health and safety maturity. This can then feed into a programme of continuous improvement.

WorkSafe has [announced](#) that the tool will now be available as downloadable questions in multiple languages. Businesses can use the questions either as a paper-based survey, or in their own choice of online survey platform (at their own cost). The results calculator has also been made available for free download.

The questions in the survey were developed using the SafePlus framework. They focus on three key areas of health and safety – leadership, worker engagement, and risk management. Businesses can use their workers' responses to the questions to calculate a SafePlus health and safety maturity rating in the three key areas, and they can repeat the survey to see their progress year on year. WorkSafe will not have access to the data as all data will remain with the business itself.

The SafePlus programme also offers an [onsite assessment and advisory service](#) led by qualified, independent SafePlus health and safety professionals, although businesses will need to pay for using this service.

## Ex-Chief Executive of Ports of Auckland Ltd sentenced for health and safety offending

The ex-Chief Executive of Ports of Auckland Limited (POAL), Tony Gibson, has been [sentenced](#) in the Auckland District Court after being found guilty of one Health and Safety at Work Act charge in November last year. Mr Gibson was fined \$130,000 and ordered to pay \$60,000 in costs to Maritime New Zealand. The maximum penalty Mr Gibson faced was a fine of \$300,000. This is the first time that an officer of a large NZ company has been convicted and sentenced for a breach of the officer duty of due diligence.

The prosecution arose after a stevedore was crushed and killed by a shipping container in August 2020. The victim had been directed to re-lash containers on the deck of a ship. At the same time, containers were being unloaded from the ship by a gantry crane. Tragically, a container came loose during a lift and fell onto the victim. The victim was working within an exclusion zone when the container fell on him despite POAL having a policy that workers, including lashers, should not be located within three container widths of an operating crane.

The District Court found that, as the Chief Executive, Mr Gibson did not exercise his due diligence responsibility for ensuring that the Port complied with its health and safety responsibilities. This was a serious departure from the duty of care he should have provided to the workers at the port as the senior officer in charge. The Court noted that a reasonable CEO would have recognised the shortfalls in POAL's management of exclusion zones and would have ensured POAL utilised appropriate resources and processes to address those shortfalls. However, Mr Gibson did not do so. You can read more about the decision in [Issue 64](#) of *The Safe Side*.

Maritime New Zealand, which took the prosecution, said it hoped the case would serve as a strong reminder to chief executives of large companies that they need to understand the critical risks at their businesses; and assure themselves, through reliable sources, that there were controls and systems in place, and that these were working effectively on the ground.

## Failures to identify and manage risks to children lead to two H&S prosecutions

Two tragic incidents involving children on opposite sides of the world demonstrate the critical importance of identifying and managing health and safety risks.

The first incident occurred in September 2021, when a twelve-year-old boy was at a birthday party at an indoor snowdome in Tamworth, England. As he descended the main ski slope in a toboggan, it slid into the back of a member of staff who was conducting a slope walk. The staff member fell backwards on to the boy who sadly died at the scene of head injuries.

The investigation by the UK health and safety regulator found that the snowdome did not have a suitable and sufficient risk assessment for tobogganing activities and had not fully considered all persons likely to be on the slope during tobogganing. As a result, there was no safe system of work, information, instruction, training or supervision to manage the risk of collisions between toboggans and pedestrians. The company was fined £100,000 and ordered to pay costs of £14,534.

Just over a year later, in [Melbourne, Australia](#), a student and an educator were admitted to hospital suffering burns

after they were set alight during an experiment run by an afterschool science programme provider.

The experiment involved igniting isopropyl alcohol. The court heard the educator appeared to have lit a match prior to pouring the isopropyl alcohol, some of which then splashed in the direction of a student and immediately set their upper body and arms on fire. The educator was then burned while attempting to smother the flames.

An investigation found no risk assessment had been completed for the experiment and participants were not wearing personal protective equipment (PPE) such as fire-resistant gloves and coats or aprons. The charity that provided the afterschool programme was fined AU\$45,000 without conviction and ordered to pay \$7,663 in costs.

The incidents highlight the critical importance of systematically identifying, assessing and effectively controlling risks, no matter what the nature of the work activity being undertaken. WorkSafe's guidance on managing risks can be found [here](#).

## Farmer jailed for more than two years after MPI animal welfare prosecution

A [Rangitikei farmer](#) has been jailed for 28 months and banned from being in charge of farm animals indefinitely over the preventable deaths of lambs and sheep. MPI inspectors found multiple sheep and lambs, some of which had died, afflicted by severe fly strike, other parasites, and inadequate nutrition across six hill country properties run by the defendant.

Despite numerous warnings and directions from MPI inspectors, follow up visits revealed little was done to improve the welfare of the animals, and the farmer was prosecuted. After sentencing, MPI warned that it will take action in the interests of animals and, where appropriate, place matters before the Court.

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