

The Safe Side

Developments in health and safety from New Zealand and around the world

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In this month's issue, we cover two sentencings of New Zealand companies for Health and Safety at Work Act (HSWA) offending. The first sentence resulted in a hefty fine of \$420,000 for a large fertiliser company after a worker was drawn into a conveyor belt and died of his injuries. The second arose after a friend of a company director, who was helping out on a voluntary basis, suffered serious leg injuries when five slabs of stone fell on him in a shipping container. We also look at four media releases from the Minister of Workplace Relations and Safety in which proposed amendments to HSWA were announced – although in the absence of further detail, what they might mean for businesses and workers in practice remains unclear.

Conveyor death results in hefty \$420,000 fine for fertiliser company

The failure to follow basic safety measures to adequately guard its conveyor belts has cost [New Zealand's largest fertiliser company](#) \$420,000 in fines following a sentencing in the Tauranga District Court this month. The company also paid \$287,202 in reparations to the victims of the offending before the sentencing took place.

In June 2023, the 37-year-old victim was cleaning around a conveyor belt at the company's Mt Maunganui factory. When he tried to step over the running conveyor, he lost his footing and was drawn into the machine. Sadly, he died from his injuries at the scene.

The subsequent WorkSafe investigation found that the moving rollers and nip points on the conveyor were not adequately guarded, and the company's procedures allowed workers to routinely clean near the operating conveyor system. In addition, workers could not easily reach the emergency stop switches should an emergency arise as the switches were too far away. WorkSafe described the conveyor as a "death-trap."

There was also a mismatch between the company's safety procedures and the reality of workers' everyday behaviour

on the ground. Stepping over the conveyor was the quickest and most effective way to carry out the cleaning. The alternative was going around the far end of the conveyor or walking 60 metres to the nearest walkway. WorkSafe commented after sentencing that: "Getting out on the floor and speaking to workers face to face about how they do things can give you a feel for exactly what's going on in a workplace. These observations can help to plug dangerous gaps."

There are established standards for machinery safety that minimise the likelihood of injury and death to workers. These include the AS/NZS 4024 Safety of Machinery series which has been recognised in many court cases as the standard to which machinery must be guarded and made safe. A competent person, such as a [CPENZ registered engineer](#) with specialist machine safety knowledge, can assist businesses to ensure their machinery complies with this standard or an equivalent standard. In addition, WorkSafe has published a wealth of guidance on machinery safety, including [information](#) on guarding conveyors.

Minister releases information on health and safety law reform



The Minister of Workplace Relations and Safety, the Hon Brooke Van Velden, has outlined changes to HSWA in four media releases published over consecutive days earlier this month. At this stage it remains unclear exactly how the changes will amend existing duties under HSWA and deliver improved health and safety outcomes.

In the [first change](#), the Minister announced that there will be a carve-out for small, low-risk businesses from general HSWA requirements. These businesses will only have to manage "critical risks" and provide basic facilities to ensure worker welfare. For example, the Minister said, a small clothing shop would still need to provide first aid, emergency plans, and basic facilities, such as suitable lighting, but would not need to have a psychosocial harm policy in place. It is, therefore, unclear how workers in these businesses will be protected from, for example, bullying and unsustainable job demands. You can read VL's article on the latest research about the risks of psychosocial hazards to workers, including their contribution to suicide, [here](#).

In addition, the Minister announced she is directing WorkSafe to confirm and provide guidance on instances of road cones overcompliance.

The Minister also announced a [second change](#) to clarify that landowners will not be responsible if someone is injured on their land while doing recreational activities. Instead, the Minister said, health and safety responsibilities will lie squarely on the organisation running the activities. PCBU's would only need to consider the risks from their work where that work is happening in the immediate vicinity of an activity. They would not be responsible for risks of the recreational activity itself.

In the absence of further detail, it is not clear how this change will meaningfully amend the [current legal position](#) which is that PCBU's are only responsible to the extent that they have, or might be expected to have, the ability to influence and control the circumstances to which the risk relates.

The [third change](#) announced by the Minister is a change to legislation to specify that the day-to-day management of health and safety risks is to be left to managers so that directors and boards can focus on governance and the strategic oversight of the business. Minister Van Veldon said owners and company directors are unclear about their health and safety duties under HSWA in both large and small businesses. Again, without further detail, it is unclear how this requirement may be codified in law as

opposed to simply clarified in dedicated guidance.

The [final change](#) is around Approved Codes of Practice (ACOPs). ACOPs are practical guidelines to help people in specific sectors and industries comply with their health and safety duties. [ACOPs](#) are already provided for in HSWA and are developed by the regulator. This must be done in consultation with unions, employer organisations and others affected by the ACOPs.

Minister Van Veldon said she is introducing a change allowing individuals and groups, such as industry organisations, to initiate work on ACOPs to speed things up and ensure they reflect what makes sense for those who deal with these risks every day. The Minister will approve each new ACOP against a set of standards (yet to be specified) to ensure they are high quality. It is unclear whether input by all those affected by the ACOP will be required before the ACOP is approved.

Lastly, Minister Van Veldon said she is also making a change to the ACOP model to reassure people that if they comply with an ACOP, they have done enough to meet their health and safety duties, although under current legislation, a [court](#) may already rely on an ACOP in determining what is reasonably practicable.

Company sentenced after a friend of the director was seriously injured when “helping out”

In March 2023, a good friend of the sole director of a kitchen benchtop company was seriously injured while helping to unload stone slabs from a shipping container. The 64-year-old victim was assisting his friend on a purely voluntary basis, as he had on other occasions. Nevertheless, he was considered a worker under HSWA, and the company was convicted of failing to keep him safe, so far as is reasonably practicable, while at work.

Around the time of the incident, the victim was helping to unload the last remaining stone slabs. Each slab weighed more than 400 kilograms. The victim used a bar to make a gap between the slabs to allow space for a clamp to be placed so the slabs could be lifted by a forklift. As he moved out of the way of the forklift, five slabs fell on his lower right leg. He sustained serious fractures to his leg and knee resulting in long term impacts on his mobility and ongoing pain.

WorkSafe's investigation found that while the company had a hazard management document which explained how to identify a hazard and how to complete a risk assessment, it did not complete a risk assessment for unloading the stone slabs and did not have any documented system in place for the unloading process. It relied entirely on verbal guidance from the director and the instructions in the owner's manual for the lifter. The victim never had a health and safety induction nor was he provided with any training on unloading the stone slabs. However, the company did have tailgate meetings each day to discuss the process.

WorkSafe's expert identified multiple ways of carrying out the work to minimise or eliminate the risks to workers from entering the “fall shadow” of the stone slabs. These

included using open top ped containers so the slabs could be lifted from above, or using braces and struts to prevent the slabs from falling.

At sentencing, the Court awarded the victim \$45,000 in emotional harm reparations. The company had already paid the victim \$26,400 and no further amount was ordered to cover his consequential loss of earnings beyond that covered by ACC. An order of \$2311.58 was also made towards WorkSafe's costs.

When deciding on the fine, the Judge adopted a starting point of \$450,000 then provided a 5% discount for cooperation with WorkSafe, good character and lack of previous convictions, and remorse. Further discounts of 25% for a guilty plea and 10% for reparations were also included. This amounted to discounts totalling 50% resulting in a fine of \$225,000.

The Judge then considered the defendant's financial ability to pay this fine. Referring to multiple other Court judgements, he observed that a fine is meant to “bite”. However, neither should the fine imperil the financial viability of the defendant. The focus needed to be on ensuring that the defendant remained viable economically while still requiring it to pay a fine. After considering extensive evidence about the company's financial situation, including from accountants from both WorkSafe and the defendant, a fine of \$75,000 payable by monthly instalments of \$1,250 over 5 years was imposed. More detail about how this reduced fine was arrived at can be found in the sentencing notes linked to [WorkSafe's Court summary](#).

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