

The Safe Side



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

August 2025 | Issue 70

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In this issue, we look at the second sentencing this year following the death of a worker in a running conveyor belt. In this case, both the company and its director were charged and convicted. We also cover the filing of new charges against KiwiRail – this time for the grounding of the Interislander ferry Aratere just north of Picton last year. In addition, we have an article about two workers who were overcome by hydrogen sulphide gas when working at a West Coast construction and demolition waste facility. Finally, we look at an Australian prosecution that came about after the tragic death of an electrical apprentice who was electrocuted while working in his father's company.

Court orders company and its director to pay \$450,000 after worker killed in conveyor

A [Timaru lumber company](#) and its sole director have been jointly sentenced after the death of a 23-year-old. The victim was working near a conveyor when he became entrapped in its drive roller in November 2022 and died of his injuries.

WorkSafe's investigation found there was no guarding to protect workers along the length of the conveyor, or in the area where the victim was drawn in. Neither had a risk assessment been completed.

The director had overall control of the company, and determined what hazard mitigation was prioritised, what was completed and when. The company had failed to follow a safety consultant's recommendation to safeguard the conveyor back in 2017. A range of other machine safety defects were also found onsite. The director was charged with failing to comply with his duty to exercise due diligence to ensure, so far as reasonably practicable, the health and safety of the workers in the business.

This was not the first tragedy at the company. In March 2016, a three-year-old boy was visiting his father for lunch at the lumber yard. The boy was climbing an unsecure stack of barn posts when they collapsed, causing fatal injuries. WorkSafe's investigation found the timber had been stacked unsafely and the company was [prosecuted](#) and convicted.

At the sentencing for the most recent death, the company was fined \$250,000 and the director, in his personal capacity, was fined \$60,000. Reparations of \$140,000 were also ordered, with \$20,000 having been paid before sentencing.

This sentencing follows a sentencing earlier this year for the death of a worker in a conveyor at a [Mt Maunganui fertiliser company](#). In that case, the country's largest fertiliser producer was fined \$420,000 and ordered to pay \$287,202 in reparations.

After sentencing, WorkSafe said that the manufacturing sector must seize the two deadly incidents as a watershed moment for health and safety. "We implore businesses to ensure their machine guarding meets safety standards. If necessary, engage a qualified expert to ensure your machinery is adequately guarded to avoid inflicting further tragedy on other families," said the acting regional manager.

Manufacturing is one of four focus industries in WorkSafe's new [strategy](#) because there is persistent harm in the sector. In March this year, WorkSafe conducted 304 proactive assessments nationwide on manufacturing businesses and issued improvement notices in 67% of them, perhaps signalling the significant progress left to be made by the industry.

Maritime NZ files charges against KiwiRail after 2024 Picton grounding of the Aratere ferry



"She's sinking alright, Captain – even the rats are wearing life jackets!!"

The KiwiRail operated [Interislander ferry Aratere](#) grounded just north of Picton in June last year. It had 47

people on board and all passengers and crew were safely returned to shore. The ferry was refloated the following evening.

Maritime New Zealand (MNZ) has just announced that it has filed two charges under the Health and Safety at Work Act against KiwiRail as a result of the grounding. This followed what MNZ described as a comprehensive and wide-ranging investigation focussed on KiwiRail bringing in new systems to older vessels and broader safety management.

The prosecution follows the [conviction of KiwiRail](#) last year after the Interislander ferry Kaitaki lost all propulsion as it approached Wellington Harbour in January 2023. On that occasion, the company was fined \$412,500 and ordered to pay \$20,000 in costs.

Companies sentenced after two workers overcome by hydrogen sulphide gas

In August 2023, two men were doing excavation work to try to fix the smell from rotting plasterboard at a demolition and construction waste facility near Greymouth. The excavator operator went into the waste pit to clear a pump blockage. As he was climbing back out, he fell unconscious and face down into black liquid leachate at the base of the pit. His 64-year-old supervisor then tried to rescue him. He fell unconscious twice when entering the pit. He eventually managed to climb out and call for help.

What neither man knew was that the smell was of hydrogen sulphide gas. The gas had been measured at dangerously high levels weeks before the incident. Hydrogen sulphide (H₂S) is a highly toxic, colourless gas which is heavier than air. The gas is corrosive and flammable. It can paralyse a person's breathing system and kill in minutes. Even in small amounts, it can be dangerous to health. The gas occurs naturally in geothermal areas but is also a by-product of some industrial processes including waste management, sewerage management, tanning and offal pits.

[WorkSafe's investigation](#) found that both the planning and risk assessment were inadequate for the excavation work. Workers were not told about the risks of hydrogen sulphide, and no gas monitors were available to help them detect its presence.

Both men suffered significant injuries from toxic gas exposure. The supervisor has not been able to work since and suffers from post-traumatic stress disorder (PTSD). The operator, who is now 38, suffered chemical burns to his eyes, chemical pneumonitis, atrial fibrillation and seizures.

The facility owner and the earthmoving company involved were both prosecuted for health and safety failures and sentenced in the Greymouth District Court this month. The owner was fined \$302,500 and the earth moving company \$272,250. Reparations of \$81,256 were also ordered to be paid to the victims.

More information on safety during work that may involve exposure to hydrogen sulphide can be found on [WorkSafe's website](#).

Fines of AU\$930,000 imposed on related companies after electrocution of an apprentice

The death of a 21-year-old apprentice electrician has resulted in [significant fines](#) for two related Australian companies. The company that employed the victim was convicted and fined \$300,000 for failing to provide employees with adequate supervision. The other related company, which ran the elevator servicing business, was convicted and fined \$580,000 for failing to provide and maintain safe systems of work and failing to ensure that people other than employees weren't exposed to health and safety risks.

In addition, the [companies were ordered](#) to pay \$30,000 and \$20,000 after pleading guilty to four and six charges respectively under Australian Electricity Safety legislation. The offences included failure to effectively supervise the apprentice and illegally working on energised electrical equipment.

In March 2021, the 21-year-old apprentice electrician responded to a service call for a faulty car lift at an apartment building, working alone while in contact with colleagues. After learning that the apprentice hadn't returned home at his usual time or responded to texts for several hours, the apprentice's father, who was the director of and effectively in control of both companies, went to the building and located his son unresponsive on the roof of the lift.

The court heard the apprentice had been electrocuted while attempting to change the door detector power unit without first disconnecting the power. A WorkSafe Victoria investigation revealed that the apprentice had been attending after-hours callouts on his own and performing the work of a licenced electrician without supervision for at least a year before his death. Australian regulations required the apprentice have supervision. Investigators also discovered that two other workers would often perform electrical work despite not being licenced electricians.

The Judge commented that: "The risk... is obvious: the risk is of death." He emphasised the importance of supervision by a licenced electrician for the safety of apprentices, because "... due to their inexperience, [they] may be more likely to overlook or ignore the safety precautions they have been taught. It is the risk of their being careless or taking short cuts that must be guarded against, not just the risk of their engaging in work with insufficient knowledge."

New Zealand has similar requirements on [supervision](#) of apprentice electricians and the type of work they can perform.

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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