

In this issue of the Safe Side, we report on a sentencing that resulted after the tragic death of a 31-year-old worker who was killed while moving engineering machinery. We also cover WorkSafe's release of new online training modules for managing chemical safety in agriculture and its warning to businesses about false tank certification. Lastly, we have an article on the dismissal of an appeal by the ex-CEO of Ports of Auckland Limited against his historic conviction and sentence under the Health and Safety at Work Act.

Company prosecuted after worker killed when moving machinery

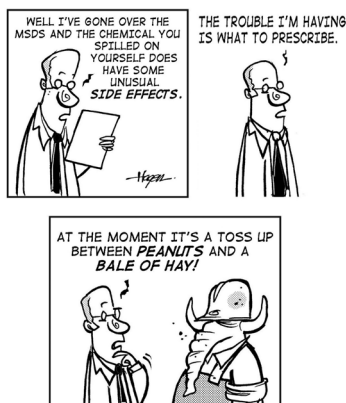
In December 2023, a team of workers was moving a 1.84-tonne press brake into an engineering workshop in Ōtorohanga. The work area had not been fully prepared for the move, meaning the press brake could not be shifted by a forklift. Instead, moving skates, a stacker and a farm jack were used. During the move, one of the skates caught in a crack in the concrete floor, causing the machine to fall and fatally crush a 31-year-old worker.

WorkSafe's subsequent [investigation](#) found the job was poorly planned. There was no task-specific risk assessment undertaken and unsuitable equipment was used. A charge was filed under the Health and Safety at Work Act (HSWA) and last month, the engineering company was sentenced in Te Kuiti District Court.

The Court ordered the payment of significant reparations of \$140,000 and imposed a fine of \$9,000. Although WorkSafe did not provide an explanation for the low fine, it is likely the business's lack of financial capacity to pay influenced the final fine imposed by the Court.

After sentencing, WorkSafe said the tragedy highlights a risk seen too often in small workplaces: jobs that fall outside day-to-day routines are tackled without enough planning, the right equipment, or clear safety controls. It cautioned small businesses to plan high-risk, ad-hoc work. "This case shows why small businesses need to treat non-routine work as high risk. Know the load, use equipment that's fit for purpose, set the job up so safer methods can be used, stop and reassess when things change," it advised.

WorkSafe releases free online learning on chemical safety for the agricultural sector



WorkSafe has developed a series of 10 free [online learning modules](#) covering the safe use and management of hazardous substances in the agricultural and horticulture sectors. The modules are designed for farm owners, managers, workers and contractors.

The modules cover topics such as understanding safety data sheets, creating a hazardous substances inventory, managing risks and emergency planning. They explain the responsibilities businesses and workers have to keep themselves and others healthy and safe on farms and other worksites.

No enrolment is required, and WorkSafe does not keep a record of completion. The modules can be accessed [here](#).

High Court dismisses appeal of conviction & sentence by Ports of Auckland CEO Tony Gibson

The [High Court](#) in Auckland has upheld the historic conviction and sentence of former Ports of Auckland Limited (POAL) Chief Executive, Tony Gibson. This conviction was significant as it was the first time an officer in a large and complex organisation had been held to account under the officer due diligence provision in HSWA.

Maritime NZ prosecuted Mr Gibson following the death of a lasher working on night shift at the port in August 2020. The 31-year-old victim had been directed to re-lash (secure) shipping containers on the deck of a ship.

To carry out the work, he was positioned in a walkway between two bays of containers while other containers were being unloaded from an adjacent bay by a gantry crane.

Despite POAL having a policy that workers, including lashers, should not be located within three container widths of an operating crane, the victim was working within the exclusion zone. Tragically, a container being lifted by the gantry crane fell, fatally crushing the victim.

Maritime New Zealand (MNZ) investigated the death and charged POAL as a PCBU with two offences under HSWA. [POAL](#) subsequently pleaded guilty, was fined \$561,000 and ordered to pay \$90,000 in costs in late 2023.

In a [separate prosecution](#), Mr Gibson was charged with failing to exercise due diligence as an officer of POAL giving rise to a risk of serious injury or death. Mr Gibson was found guilty following a Judge-alone trial in the Auckland District Court in 2024, was fined \$130,000, and ordered to pay costs of \$60,000. Judge Bonnar, the trial Judge, concluded 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. He found Mr Gibson did not do so.

Mr Gibson then appealed his conviction to the High Court on a number of grounds, including that Judge Bonnar had made Mr Gibson a "proxy" for the failings of POAL rather than independently assessing his conduct as an officer and that the due diligence standard applied focussed on the need to develop best practice systems and a CEO having "ultimate responsibility" for "systems leadership", concepts and obligations which are not referenced in Section 44 of HSWA. Mr Gibson also appealed his sentence.

Mr Gibson's appeal of the conviction and sentence was [dismissed](#). The High Court found that Judge Bonnar was entitled to find that Mr Gibson had not taken steps that a reasonable officer in the same circumstances would have taken to implement an appropriate exclusion zone around cranes working over ships and to monitor and measure compliance by lashers on the night shift. In the same circumstances, a reasonable officer would have recognised shortfalls in POAL's management of exclusion zones and taken further steps.

The High Court noted that Mr Gibson was personally aware of the risks to stevedores working under suspended

containers and the need, in that case, for additional controls to be put in place.

POAL's training materials and documentation in relation to exclusion zone policy were confusing and, often, inconsistent, and workers had different understandings of the operation of the three-container width rule. While Mr Gibson was entitled to rely on expert advice as the appropriateness of the policy, there was significant non-compliance with it and inadequate monitoring of work "as done" on the night shift. Mr Gibson should have sought improved performance measures to monitor the effectiveness of the policy. At least in part, it was also the responsibility of Mr Gibson to take reasonable steps to implement a system that monitored and measured compliance with it.

Further to this, a previous fatality in 2018 should have put Mr Gibson on notice that POAL had demonstrated ongoing difficulties in adequately monitoring work "as done". As CEO, Mr Gibson should have been aware that appropriate systems and processes needed to be put in place to address POAL's previous failures. This did not mean Mr Gibson did nothing following the previous fatality, but more could and should have been done to monitor and measure compliance in relation to the critical risk of handling loads.

The High Court also found that while the starting point for the fine of \$140,000 may have been "stern", and the reduction of \$10,000 "not generous", they were not outside the appropriate range. The costs award was also in range. The overall packet of sanctions was, therefore, not manifestly excessive.

There are many useful articles available covering the decision, including these by [Russell McVeagh](#), [Hesketh Henry](#) and [Dentons](#).

WorkSafe warns businesses about forged diesel tank certificates & consults on new ACOPs

WorkSafe says that anyone operating a hazardous substances system must understand their responsibility to ensure their certification is real, current and issued by someone authorised to do the work.

The warning was given after a tank installer, who was not an authorised compliance certifier, issued convincing-looking [fraudulent compliance certificates](#) for diesel tanks using the names of real certifiers. This month, the installer was convicted under the Crimes Act for making false documents and sentenced to five months community detention.

WorkSafe's investigation found the false certificates were issued for diesel tanks at the National Library site in Whanganui and six police stations where diesel tanks were used to fuel back-up power generators. WorkSafe commented that without proper inspection, defects such as faulty pipework, inadequate containment, corrosion, or incorrect installation can go unnoticed. These can lead to serious incidents.

Businesses can either check a certificate directly with the issuing certifier, or against WorkSafe's [official register](#).

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