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On 1 April next year, substantial amendments to the Health and Safety at Work Act will come into force. In this issue, we briefly cover what the key changes mean for businesses. We also have an article on the eye-watering AU$3.4m fine imposed on an Australian bakery for industrial manslaughter after a worker was killed in a four-metre fall while removing insulation panels from the bakery's ceiling. In addition, we write about a warning from WorkSafe to farmers on clearing up windblown trees, the latest enforceable undertaking that was accepted by WorkSafe following the death of a road traffic controller and the sentencing of KiwiRail for health and safety failures related to the grounding of the ferry Aratere in Picton Harbour in 2024.

Amendments to health and safety law to come into force from 1 April 2027

On 1 April 2027, exactly eleven years after the Health and Safety at Work Act 2015 (HSWA) first came into force, the most substantial changes to HSWA since its enactment will begin to apply to New Zealand businesses.

In a key change, small businesses (those with fewer than 20 workers or fewer than 20 workers for at least nine months of the financial year) will be explicitly required to manage critical risks and to prioritise critical risk when complying with other provisions of HSWA and its regulations. Larger businesses must manage all risks but prioritise those that are critical.

All businesses will need to identify critical risks based on what they should reasonably know about their work. What is a critical risk is defined in the amendments to HSWA. It includes a risk associated with any hazard likely to result in death, a notifiable injury, illness or incident, or an occupational disease listed in Schedule 2 of the Accident Compensation Act 2001. In addition, a new Schedule in HSWA lists hazards that will automatically be treated as critical risks.

Other key changes include:

- The ability for industry, worker, and employer organisations to develop their own codes of practice for approval by the Minister of Workplace Relations and Safety (ACOPs).
- Setting out that where a business follows an ACOP, it is taken to have complied with the Act meaning enforcement action cannot be taken about a relevant matter.
- Providing more clarity on the injuries and illnesses that must be notified to WorkSafe.
- Narrower duties for landowners and officers.

You can read more about the changes on WorkSafe's website. There is also a useful article available from Simpson Grierson.

The amendments did not receive cross-party support, and it is likely many or all will be repealed if the Government substantially changes after the upcoming election.

WorkSafe warns farmers about the dangers of clearing storm-damaged trees

"We figure out real quick who's gonna make it as a tree surgeon."

With winter storms upon us, WorkSafe has warned farmers to take extra care clearing storm-damaged trees after receiving reports of unsafe chainsaw and machinery use. One person fell four metres while using a chainsaw on a partly fallen tree and needed major surgery. Another suffered a deep chainsaw injury to their foot. WorkSafe says it has also heard of tractors being used to pull out damaged trees and unsafe attempts to free stuck chainsaw bars.

WorkSafe says storm-damaged trees can be unpredictable, with hidden pressure that can release suddenly. Even experienced farmers can be caught out because this is not the same as cutting firewood or dealing with ordinary fallen branches.

With experienced contractors sometimes in short supply, WorkSafe recommends that farmers fence off dangerous areas, keep people away, and wait for someone with the right skills and gear. If hiring help, the regulator suggests checking they have proper chainsaw safety training and experience working with trees under tension. WorkSafe says calling in a professional is the safer, smarter option.

Australian bakery company fined $3.4 million for workplace manslaughter

In the largest fine imposed for a single offence under Victoria, Australia's workplace safety laws, a garlic bread wholesaling company has been convicted and ordered to pay $3.4 million for workplace manslaughter after a worker fell to his death at a bakery.

In August 2021, the company was undertaking ceiling upgrades at the bakery and engaged three workers to remove large insulation panels suspended in the roof space. While carrying out the work, a 53-year-old worker fell approximately four metres to the ground below, sustaining fatal head injuries.

A WorkSafe Victoria investigation found that before commencing works, the company did not refer to any industry standard or guidance material, and did not have any control measures in place to reduce or eliminate the risk of a fall from height. While harnesses were available at the workplace, workers were not required to use them.

The court heard the company's failure was negligent because it fell well short of the standard of care that would have been taken by a reasonable person in the circumstances.

This is the second prosecution under Victoria's workplace manslaughter provisions since they were introduced in 2020.

After sentencing, WorkSafe Victoria warned that: "Working at height is one of the most obvious and well-understood workplace risks, with the tragic consequences of non-compliance proven time and time again. Failing to protect your workers is beyond inexcusable and WorkSafe will continue to target negligent employers who choose to ignore their legal duties and gamble with workers' lives."

KiwiRail fined $375,000 over grounding of Aratere ferry in Picton Harbour

On 21 June 2024, the KiwiRail ferry, *Aratere*, ran aground at Titoki Bay in Picton Harbour while on a freight sailing between Wellington and Picton. On board were 39 crew members and eight passengers. No one was hurt. The ferry was refloated the following evening. There were no oil spills and no breaches to the vessel's hull because of the grounding.

The grounding followed changes to a safety-critical steering system on *Aratere*. Maritime NZ's investigation found failures in KiwiRail's change-management processes and organisational controls around the changes, including training and familiarisation, documentation, control of critical steering functions and bridge resource management.

As a result of the investigation findings, Maritime NZ commenced a prosecution under HSWA. KiwiRail pled guilty and was sentenced in the District Court in Wellington in May. It was fined $375,000 and ordered to pay $25,000 in costs.

Following sentencing, Maritime NZ Director, Kirstie Hewlett, said there was a clear knowledge gap about how the newly installed steering console worked, including in an emergency. "This event sends a clear message to operators to ensure masters and crews are properly trained and provided sufficient time and opportunity to familiarise themselves when introducing safety critical equipment, so that they can correctly undertake all safety critical actions on the vessel."

WorkSafe accepts enforceable undertaking after death of road traffic control worker

WorkSafe has shown increasing enthusiasm for enforceable undertakings lately, especially those that propose novel technological safety solutions. Under the terms of the latest EU entered into with a traffic management company, a virtual reality (VR) temporary traffic management simulator, including an industry training package, competency framework, and case study, will be rolled out to support improved planning and hazard identification across the sector.

The EU followed the death of a worker operating as a Traffic Controller. The victim was struck by a truck while removing road cones at a temporary roadblock in 2023. The worker's whānau will be paid $194,900 as part of the EU's agreed terms.

You can read more about recent EUs on WorkSafe's website.