

The Safe Side



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

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Page 1 of 2

When we think about falls from height, we often think of the construction industry. Yet a wide range of businesses have been prosecuted by WorkSafe for fall incidents. In this issue, we touch on some of these prosecutions and suggest that all businesses need to look for and manage their fall from height hazards. We also cover the conviction of a worker by Maritime New Zealand, what WorkSafe is saying about prosecuting officers and one approach to managing “critical risks”.

– Jane Birdsall, Executive Manager, Health & Safety and Statutory Risk Claims & Consulting

All businesses need to consider the potential for workers and the public to fall from height

WorkSafe [data](#) shows that between September 2018 to August 2019, eight people died after a fall from height. In addition, 2,136 workers were absent from work for a week or more as a result of a fall in 2018.

Many of these falls occurred in the construction industry where workers routinely carry out elevated work. But the range of companies prosecuted for fall from height incidents suggests that all workplaces need to identify height hazards, assess the risks that arise from them and put in place, and monitor the effectiveness of, effective controls.

This was highlighted when a [school board of trustees](#) (BOT) was recently ordered to pay \$100,000 in reparations to a teacher and student who were seriously injured after they fell 3.9 metres from the working platform of a scaffold. The scaffold was being used to set up lighting for plays and assemblies. Instead of a fine, the BOT had a project order imposed requiring them to give a safety presentation to the School Trustee Association Conference in 2020.

In another recent example, a worker at a transfer station fell 3 metres into a hopper and sustained a traumatic brain

injury and leg fracture. The company had an [enforceable undertaking](#) accepted by WorkSafe and the prosecution was discontinued.

Further examples include the prosecution of a [carpet retailer](#), a [Workingman’s Club](#) and an Auckland [gym](#).

Where to go for guidance

WorkSafe has extensive guidance on managing work at height including a [best practice guide](#). While generally aimed at construction work, the principles are universal. In addition, the UK’s Health and Safety Executive has a useful [webpage](#) dedicated to managing work at height safely.

The New Zealand [Building Code](#) also sets out minimum standards and acceptable solutions for protecting edges on built structures including mezzanines, balconies and stairs.

Managing “critical” risks

Not all risks are the same. Some are likely to be realised frequently but will usually only result in a minor injury; some are realised infrequently but have the potential to result in death or severe injury. Mostly it is the latter that will lead to an investigation and prosecution by a regulator. WorkSafe often refers to these types of risks as “[critical risks](#)”.

Traditional health and safety thinking held that by investigating and learning lessons from the frequent minor injuries, an organisation could learn to manage its critical risks better and reduce the likelihood of them being realised. But recent thinking is that there is limited overlap between the two types of risks and the causal pathways of each type of incident are often distinct from each other.

A more effective way to manage critical risks may be to systematically focus on their key controls – identifying what they are; determining whether they offer the highest level of protection to workers; monitoring whether they are in place and functioning as planned and learning from the times when they are compromised. It might be useful to oversee this process from the boardroom.

More information on this type of approach is available from the [International Council on Mining and Metals](#).



“No, I don’t want to see you do a headstand.”

Is WorkSafe signalling a tougher approach to directors and officers?

Leaders set the tone of an organisation's culture and are widely acknowledged as being central to driving good health and safety outcomes. Yet there have been no convictions of directors and officers under the Health and Safety at Work Act (HASWA) for a breach of the duty of due diligence. Senior leaders could be forgiven for thinking that WorkSafe is not particularly interested in enforcement in this area.

However, WorkSafe has signalled a change in approach with the release of an updated [position statement](#) on officers' due diligence and comments by its outgoing Chief Executive (CE). In addition, the first charge for a breach of section 44 has recently been filed against a director and officer and this is currently before the Courts.

WorkSafe's 2019 position statement on "Due Diligence" says that it may consider enforcement action when there is evidence of systemic failure in the PCBU's governance and the officer's failure is preventing the PCBU from meeting its duties. It gives an example of this as being when a PCBU

has failures across multiple sites or a series of incidents over time. This approach was reiterated by WorkSafe's CE Nicole Rosie in a recent presentation in Auckland. She put officers of companies that had repeated failures on notice that WorkSafe may be looking at their conduct.

However, based on Australia's experience and the prosecutions that were taken under the old Act, VL's expectation is that the directors who are most likely to be charged are those in small businesses who are personally involved in the day to day work that led to the offending.

VL's [Statutory Liability](#) policies will generally indemnify officers of the Insured if the officer is investigated for a breach of due diligence duties under HASWA. However, given that the business itself is also likely to be investigated at the same time, the limit of indemnity of the policy may need to be sufficient to cover separate legal representation for both the PCBU and the officer/s.

Worker prosecuted for failing to take reasonable care

In July 2017, a digger was being unloaded by a crane from a vessel anchored at Northport. As the digger was lifted off the ship, the lifting cables failed and the digger fell onto the wharf. It landed approximately seven metres away from four workers.

Maritime New Zealand investigated and charged the ship foreman with an offence under section 45 of HASWA for failing to take reasonable care that his acts or omissions did not adversely affect the health and safety of other persons. The maximum fine for this offence is \$50,000.

Although the defendant was not specifically trained as a ship foreman, the prosecution alleged that: he departed from

prevailing standards when unloading the digger by not checking the digger before it was lifted; not ensuring other workers were present to assist with the lift and not being clear that workers needed to stay out of the exclusion zone during the lift.

The [Court](#) found that the defendant's culpability was at the lower end of the scale and the starting point for the fine was set in the \$8,000 region. After the application of discounts, the final fine would have been around \$800 to \$1,000. The Court accepted that the defendant did not require the greater deterrence of a fine and he was convicted and discharged.

Health, safety and other statutory liability news in brief

Farming, forestry and fishing have highest injury rates

Workers in the agriculture, forestry and fishing industry are almost twice as likely to be injured as other workers.

[Read more ►](#)

Australian power company convicted after large fire

A 2014 mine fire which burned for 45 days and cloaked a town in smoke has resulted in a health and safety conviction. WorkSafe Victoria alleged that there was a failure by the defendant company to do an adequate risk assessment, slash vegetation or provide an adequate reticulated water system. [Read more ►](#)

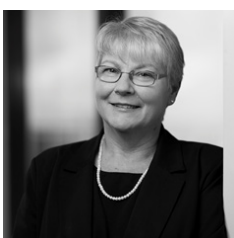
Commerce Commission complaints leap 20%

Consumers appear to be more willing to make complaints to the Commerce Commission. Almost all complaints relate to the Fair Trading Act, according to the Commerce Commission's complaints snapshot. [Read more ►](#)

Coroner warns schools of the risks of skylights

The coroner recommends that schools remove skylights or comply with Ministry of Education guidance on roofing materials after the death of a 16-year-old boy who fell through a roof skylight in an Opotiki school building.

[Read more ►](#)



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