

Welcome to the first issue of the Safe Side for 2021. We start the year by looking at two significant sentencings – the first as a result of the massive gas explosion that destroyed six houses in Christchurch in 2019, and the second a record fine for Ports of Auckland following the death of a worker. We also cover the limited review of WorkSafe’s regulatory role in the Whakaari/White Island eruption, the ongoing issue of risk assessments when using machinery and how to get \$180 back after installing a crush protection device on your quad bike.

The importance of risk assessments for machinery use to avoid costly prosecutions

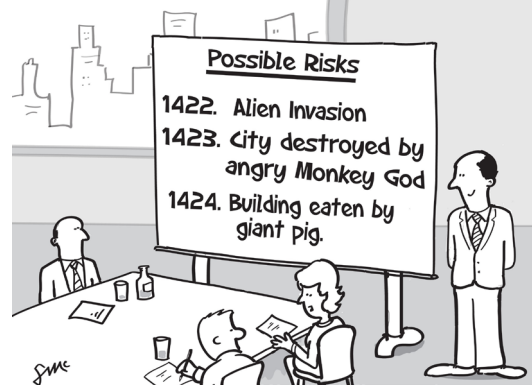
Convictions for a failure to adequately guard machinery are common. Unlike many other health and safety investigations, it is often relatively straightforward for WorkSafe inspectors to put together a prosecution case after a worker is harmed by machinery. The comprehensive AS/NZ 4024 Machinery Safety series is routinely accepted by the Court as the industry standard. And the condition of the guarding on the machine usually provides much of the evidence needed to prove an offence.

Over two months last year, at least four WorkSafe prosecutions for inadequate machine guarding went to sentencing. In July, a [food packaging company](#) was fined \$132,000 and paid reparations of \$36,000 after high temperature sealing bars closed on a worker’s hand causing third degree burns. A few weeks earlier, a [hospitality business](#) was fined \$260,000 and ordered to pay reparations of over \$40,000 after a worker’s hand was crushed between running rollers on a pastry rolling machine.

A month earlier, a manufacturing company was ordered to pay reparations of \$24,000 (on top of the \$3,020 already paid) after it failed to adequately guard a press brake. No fine was imposed due to the perilous financial situation of the company. And as we wrote in [Issue 16](#) of the Safe Side, a Court Ordered Enforceable Undertaking costing around \$275,000 was made against a Polytech which failed to adequately guard a draw saw.

In all four prosecutions, a common failure alleged by WorkSafe was an inadequate or ineffective risk assessment. Without a risk assessment, it is difficult to systematically identify the hazards arising from machinery use, then assess the risks and implement appropriate controls.

For a risk assessment to be adequate and effective, it needs to be undertaken by a competent person. For many PCBUs, this may mean engaging a certified professional engineer with a speciality in machinery safety. Although this will involve some expenditure, it may be less costly than facing a fine, an injured worker and the reputational damage, stress and disruption of a criminal prosecution and conviction.



“Well he certainly does a very thorough risk analysis.”

Sentencing for the devastating 2019 gas explosion in Christchurch

The images from the gas explosion in Northwood, Christchurch, were sobering, and, says [WorkSafe](#), the incident should serve as a warning to all gasfitters.

In July 2019, a certified gas fitter was repairing the fireplace in a Christchurch home. After removing a gas valve, he didn’t cap the open pipe and failed to tell the residents not to turn the gas supply back on. He was planning to return the next day to complete the repairs.

Later that evening, the gas was turned back on to make dinner. The following morning, the gas that had accumulated was ignited fuelling a significant explosion.

The property was completely destroyed and its five occupants sustained burns, some serious. Five

neighbouring houses were left uninhabitable and other properties were damaged.

WorkSafe prosecuted both the gas fitting company and the gas fitter personally under the Gas Act and its regulations. The company was fined \$82,500. The gas fitter was sentenced to 325 hours of community service. Both parties were ordered to pay total reparations of \$134,300 to the victims. The split between the parties was not clarified by the Court.

The incident once again underscores the importance of having sufficient statutory and public liability cover when there is a risk of a catastrophic event arising from their work activities, even small companies.

Subsidies to make quad bikes safer are still available from ACC

In our [last issue](#) of the Safe Side, we covered the spate of fatalities linked to vehicles on farms that occurred between June and September 2020. Sadly, since that time, there have been further deaths.

ACC is continuing to offer a cash back on quad bike crush protection devices (CPDs). The subsidy is open to self-employed farmers or small to medium farming businesses. Those who qualify will get a \$180 (+ GST) cash back after

installing specified CPDs. The cost of the CPDs start from \$595 (+ GST).

[WorkSafe's position](#) is that CPDs are likely to prevent serious and fatal injuries and strongly recommends that farmers have a CPD installed. And as we wrote in [Issue 8](#) of the Safe Side, WorkSafe has indicated that it is likely to require CPDs in the future.

Ports of Auckland fined a record \$540,000 following the death of a port worker

The death of a 23-year-old father and straddle carrier driver has led to a record fine for [Ports of Auckland](#) (POA).

The port company, which is wholly owned by Auckland Council, was ordered to pay a total of \$676,000 following a conviction under the Health and Safety at Work Act (HASWA). This included a fine of \$540,000 which, to VL's knowledge, is the highest fine imposed on a PCBU since HASWA came into force. Reparations of \$136,000 were also awarded to the victim's family.

The fatal incident occurred on 27 August 2018 when the victim was operating the straddle carrier from his cab 11 metres above the ground during the night shift. The straddle carrier tipped over as it undertook a U-turn and the victim later died in hospital from the serious injuries he sustained. He was not wearing his seatbelt when the incident occurred.

The investigation found that when straddle carriers took turns too quickly, and compromised their stability, a "tip alarm" was activated. POA was automatically alerted to these tip alarms and knew they were being activated regularly. Yet it failed to take action.

At the same time, POA had a bonus system in place which rewarded drivers for productivity. The risks to safety that can arise from productivity bonuses were highlighted as far back as 2012 by the [Royal Commission on the Pike](#)

[River Coal Mine Tragedy](#). WorkSafe commented after POA's sentencing that while the bonus system was conditional on health and safety compliance, the Ports had done nothing to promote safe driving and counteract any incentive to achieve greater productivity at the expense of safety.

The [Maritime Union of New Zealand](#) also underscored the contribution of the productivity bonus system to the culture that led to the prosecution and called for senior managers and board chairs to be held individually accountable. "Until those managers who have a duty of care to their workforce are prosecuted for recklessness under the Health and Safety at Work Act, we will continue to see a culture of profit before safety," it said in a media release. The Maritime Union has also advocated for [corporate manslaughter laws](#) to be set at a level that acts as a deterrent.

In response to the spate of fatalities at the Port, Auckland Council [announced](#) in October 2020 that it had commissioned an independent review of health and safety. Mayor Phil Goff observed that, "With three fatalities at the Port in recent years, and a number of other serious injuries, as its shareholder, Auckland Council wants to ensure that POA's health and safety culture and the systems it operates better meet its goal of a zero harm workplace. A safe working environment is integral to the operation of a successful business."

Government announces a limited independent review following the White Island tragedy

The Minister of Workplace Relations and Safety has [announced](#) a limited independent review into the way in which WorkSafe performed its regulatory functions in relation to Whakaari/White Island.

The [review](#) will assess the adequacy and appropriateness of WorkSafe's actions in relation to Whakaari/White Island and whether further steps should have been taken. It will also identify whether any changes to WorkSafe's systems, processes and practices are necessary or desirable. David Laurenson QC has been appointed to undertake the review and the Minister expects to receive it in May.

The review falls well short of a public inquiry. It will not call for submissions from organisations and the public. The [Terms of Reference](#) limit interviews to relevant WorkSafe staff, the CTU, Business New Zealand and two industry associations.

The review follows on from a limited [targeted review](#) of the adventure activities regime and how it operates when activities take place in naturally-hazardous environments. This was undertaken by the Ministry of Business Innovation and Employment which has responsibility for overall health and safety policy, regulation and strategy. The targeted review identified a number of improvements including strengthening the regulatory leadership role of WorkSafe, increasing the safety audit standard's focus on natural hazards and improving the adventure activities certification scheme.

Meanwhile, WorkSafe has advised that the next hearing date for the prosecutions relating to the tragedy is set down for 5 March 2021.