

Most businesses aren't overjoyed when a health and safety inspector turns up at their workplace, but it rarely pays to repeatedly refuse to cooperate with them. In this issue, we look at two individuals who were prosecuted for doing just that. We also cover the first enforceable undertaking accepted by Maritime New Zealand, where to find guidance on working in the heat and a recent prosecution by Auckland Council for RMA and Building Act offences. Finally, we look at a further conviction of a gasfitter by WorkSafe following the tragic death of a child and an Australian prosecution that engineering consultancies in New Zealand may like to pay attention to.

When health and safety inspectors come visiting

Inspectors have very wide powers under the Health and Safety at Work Act 2015 (HASWA). These include the power to enter a workplace at any reasonable time to conduct inspections, inquiries, tests and examinations. They can also take photographs, measurements, make sketches and recordings. In addition, they can require certain people to make statements in any form or manner that the inspector specifies and provide information and documents. These powers are generally more far-reaching than those granted to the Police and repeatedly and deliberately failing to comply with them or "obstructing an inspector" is unlikely to end well.

In the most recent example of this, a [Manawatu farmer](#) was convicted of obstructing an inspector last month. He was first visited by inspectors as part of a campaign to educate and upskill farmers on hazardous substances. However, despite having multiple further interactions, he consistently refused inspectors access to his property. The farmer then failed to attend or make alternative arrangements to complete a required interview at WorkSafe's offices.

The Judge found the defendant's behaviour to be deliberately obstructive and he was fined \$4,000. While the fine is not large, it was easily avoidable, and the defendant now has a criminal conviction entered against his name.

In another example, a Wellington man was [convicted](#) of the same offence in May 2019. In his case, he failed to cooperate with WorkSafe inspectors while an investigation took place. He also failed to attend interviews on four separate occasions and did not provide documentation to assist with WorkSafe's investigation. In spite of this, he was still convicted of a charge of failing to ensure the health and safety of other persons after not implementing a traffic management plan to isolate the public from tree work.

In addition, he was fined \$2,000 for the obstruction charge after the Court considered his financial capacity in arriving at its decision.

VL recommends that PCBUs and individuals cooperate with inspectors who are lawfully exercising their powers to carry out a visit or inspection of a workplace. Inspectors will often be open to rescheduling an inspection if it is inconvenient. And the statutory liability policy may not respond if there is a deliberate failure to assist an inspector and this results in a prosecution.

If the inspector is at the workplace as a result of an incident or accident, then the broker should be notified at the earliest opportunity so legal representation can be arranged if needed. Read more about planning for and responding to a work accident in [Issue 8](#) and [Issue 9](#) of the Safe Side.



"I haven't found anything wrong yet, but it's ok for you to go ahead and worry a bit longer."

Dealing with the heat at work

Working in hot temperatures is likely to create health and safety risks that must be managed. At the lower end of the spectrum, [thermal discomfort](#) may decrease morale and productivity amongst workers. More severe thermal stress, if not adequately managed, is likely to lead to fatigue and dehydration which affect judgement, making workers more prone to making poor safety decisions. At its most serious,

working in extreme heat can lead to fatal heat stroke or skin cancer as a result of exposure to solar UV radiation.

WorkSafe has published good practice guidelines on working in [extremes of temperature](#). SafeWork Australia has also produced comprehensive guidance on managing exposure to [solar ultraviolet radiation](#).

Gas fitter sentenced following the death of a 12-year-old boy

A gas fitter and his company have been convicted and [sentenced](#) under the Plumbers, Gasfitters and Drainlayers Act following the tragic death of a 12-year-old boy in Haast in October, 2018.

The boy died of carbon monoxide poisoning after being overcome while using a small, unventilated shower unit at a holiday home. Hot water for the shower was provided by a gas-fuelled water heater which should not have been installed in the unventilated bathroom.

A gas water heater was first installed in the bathroom in 2016 by another gasfitter and the work was certified by the defendant. However, the defendant did not inspect the water heater or carry out any tests, and did not ask the installer questions about his work or any testing that had been done. The need for adequate ventilation was not discussed with the family who were using it. The original water heater was

replaced in 2018 by a family member using the same model as the original one and locating it in the same place. WorkSafe found that the new installation did not materially alter the danger the original gas heater presented to users.

At sentencing, the Court awarded \$70,000 in reparations to the boy's family with the company paying \$50,000 of this. The company was also fined \$104,500 for negligently doing gas fitting work in a manner that is dangerous to life. The individual, who was also a director of the company, was fined \$19,250 for the same offence and was ordered to pay the remaining reparations.

This sentencing follows on from the sentencing of another gasfitter in December last year. WorkSafe's [Energy Safety](#) division has once again shown that it is willing to prosecute safety failures by those carrying out gas work if it results in significant harm to the public.

AU engineering company and its director fined for providing dangerous demolition advice

New South Wales' health and safety regulator, SafeWork, has prosecuted an [engineering company](#) and its director following the unplanned collapse of the former Sydney Entertainment Centre's roof during demolition.

The engineering company failed to undertake relevant calculations or computer modelling to assess the risk of unplanned structural collapse of the roof, instead relying solely on fallible engineering judgment. Once demolition began, the roof collapsed, crushing an excavator and trapping a worker.

The NSW Minister for Better Regulation commented that: "Construction and demolition workers rely on the advice provided by engineers for their safety. The risks could

have been minimised, if not eliminated, with proper analysis, planning and communication by the Engineer."

The breadth of a PCBU's duties under New Zealand's HASWA make it likely that health and safety charges could be brought in similar circumstances here. Providing advice that puts others at risk as part of the conduct of a business or undertaking may be an offence. VL recommends that consulting engineering companies have adequate statutory liability cover for legal representation and reparations should the need arise. In cases where structural collapse or other unplanned events could result in harm to multiple people, those reparations could potentially be very high.

Maritime NZ accepts its first enforceable undertaking

WorkSafe accepted its first [enforceable undertaking](#) in April 2017 and since then has accepted a further 31 enforceable undertakings up until October last year. Now Maritime NZ has come on board after accepting its first [enforceable undertaking](#) from one of New Zealand's biggest stevedoring companies, ISO Ltd. The enforceable undertaking will cost the company \$425,000 plus financial amends made to the victim.

The enforceable undertaking was accepted after charges were filed for a near fatal accident involving one of ISO Ltd's workers in December 2017. The stevedore fell over eight metres onto a concrete wharf after trying to get down from a stack of logs on a ship's deck.

As part of the enforceable undertaking, ISO Ltd has undertaken to develop and deliver a national training programme for management personnel on working at heights in stevedoring operations. This includes training ISO Ltd's own 400 stevedoring staff. It will also carry out research and develop solutions for above deck cargo as well as continuing to support the victim and provide donations to the air ambulance group that transported the victim between hospitals and the preschool the victim's children attend.

A copy of the full text of the [enforceable undertaking](#) is on the Maritime NZ website.

Company and individual fined a total of \$112,500 for RMA and Building Act offences

In other news, [Auckland Council](#) has successfully prosecuted a company and individual in relation to the use of a warehouse to accommodate predominantly migrant Filipino workers. While the property was zoned to allow workers' accommodation, it did not have resource consent for the way it was being used and did not have a current building warrant of fitness. The layout inside the building posed a serious fire risk.

The company was fined \$67,000 and the individual \$45,000.