

It may be that WorkSafe has recovered its earlier enthusiasm for Enforceable Undertakings (EUs) as an alternative to prosecution. Last month, we covered two new EUs made under the Health and Safety at Work Act 2015 (HASWA). This month, we look at two further EUs that WorkSafe has recently accepted. We also have articles on the sentencing of an Australian company after the tragic death of an 80-year-old man who died after being trapped in a disused stairwell, and the prosecution of a director and company following long term and persistent bullying of a subcontractor. Finally, we cover the filing of a charge by Maritime New Zealand against KiwiRail after the Interislander ferry, Kaitaki, lost power in the Cook Strait last year.

Two further enforceable undertakings accepted by WorkSafe

We might be seeing a renewed enthusiasm for enforceable undertakings (EUs) from WorkSafe after a slump in numbers in recent years. The regulator has just accepted two further EUs, following on the heels of the [EU made with Police](#) in February.

An EU is an agreement between WorkSafe and a duty holder made under section 123 of HASWA. WorkSafe generally accepts EUs as an alternative to prosecution, and any pending charges against the duty holder are withdrawn. In turn, the duty holder agrees to take actions to support improvements in health and safety.

The [first new EU](#) made in March was with a timber processing company after a worker sustained serious hand injuries in December 2021. The victim was operating a docking saw to trim the ragged ends of timber when his hand struck the blade. He lost the middle finger and index finger on his left hand below the knuckle. His ring finger was also injured and is permanently damaged.

After a WorkSafe investigation, the company was charged with failing to ensure there was effective guarding or controls for the safe operation of the saw in accordance with the AS/NZS 4024:2012 Safety of Machinery series (or a similar relevant standard).

The EU involves a total spend of over \$115,977, which is low compared to many other EUs, but perhaps reflects the size of the company which has only 25 fulltime and 10 casual employees. To date, EUs have often been with very large employers.

The terms of the EU include making financial amends to the victim totalling \$46,977. In addition, the company has undertaken to prepare and deliver: a Technical Bulletin on saw guarding; a Student Workplace Safety Programme; and a Workshop Series in collaboration with New Zealand Industry Timber Industry Federation. It also made a \$10,000 donation to the local fire brigade. The victim strongly supported the EU.

At the other end of the spectrum, [Mercury NZ Limited](#) committed to a spend of over \$1.15 million in the second EU accepted by WorkSafe in March.

No one was injured in the incident which led to the EU, but there was a high risk of serious injury. On 7 July 2021, during commissioning activities at the Rotokawa Power Station near Taupō, fluids with significantly different temperatures unintentionally mixed, leading to severe steam hammer and the uncontrolled release of geothermal steam. The pipework in one area of the plant was exposed to extreme forces, with an intensity that ejected flange bolts, split valve bonnets, and tore welded fixings. Fortunately, no one was in the area at the time as onsite personnel were on their morning tea break outside the site fence.

A WorkSafe investigation found shortcomings in plant installation decisions and risk assessment by Mercury, and ineffective communication between offsite control room operators and the personnel onsite.

The EU agreement includes the delivery of an internal leadership programme to promote a proactive safety culture in high-risk process safety environments. In addition, Mercury has undertaken to share the resources developed and lessons learned from the incident with industry, as well as make donations to Emergency Service Organisations and a Health and Safety Professional Scholarship. The company will also trial a novel self-driving (autonomous) vehicle for plant inspections to reduce or eliminate worker exposure, especially during high-risk operations such as start-up and shut down.

VL recommends that Insured explore any interest in an EU at the earliest opportunity. It is useful to go to the [WorkSafe website](#) and read previous EU agreements to get an idea of what an EU might entail and what kind of proposals are likely to be attractive to WorkSafe. You can read more about EUs in [Issue 36](#) of *The Safe Side*.

Elderly man's death leads to AU\$150,000 fine for Brisbane property management company

An Australian [building management firm](#) has been fined AU\$150,000 for health and safety offending following the death of an 80 year-old man in a disused stairwell.

In May 2022, the victim went to a multi-storey building in Brisbane that was managed by the defendant to meet his accountant. While on level 4, he asked the receptionist if he could use the bathroom, but never returned. The following day, his family raised the alarm and he was found, deceased, in the disused stairwell near the reception.

Around 2016, the internal stairwell that connected levels 3 and 4 was no longer needed so the entry door on level 3 was covered over. The entry on level 4 remained and was accessed through a door in an alcove next to the male toilet. The door had an automatic closing device, meaning that once it closed, anyone in the stairwell could not get out. The disused stairwell was dark, and the wall lights were not working. There was a clear risk of fall and entrapment.

The incident highlights the importance of having robust systems to report and learn from near miss incidents. On three previous occasions between 2020 and 2021, individuals had been trapped in the internal stairwell, with two events occurring within eight months of the man's death. The facilities manager employed by the defendant knew about two of the entrapments, but did nothing to remedy the hazard or report the entrapments to the defendant. The facilities manager was also charged (as a worker) and sentenced on 17 November 2023 to a fine of AU\$30,000.

The Judge found that the risk was readily foreseeable and was ultimately rectified quickly and at little cost. Post-incident, around \$3,000 was spent by the defendant to install deadbolts on both doors, replace the locking mechanism, ensure there was adequate lighting in the stairwell, install a sensor behind the door and install signage on the level 4 door.

Maritime NZ files a charge against KiwiRail after loss of power on the Kaitaki ferry

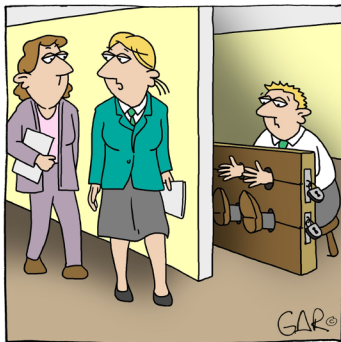
On 28 January 2023, the Cook Strait ferry, *Kaitaki*, lost power on its approach into Wellington Harbour with more than 800 passengers and 80 crew on board. The ship issued a mayday, and after regaining limited power, made its way safely to port.

Maritime New Zealand (MNZ) subsequently [investigated](#) the incident, including by reviewing the operator's processes and procedures connected to safety and maintenance

management, and examining the *Kaitaki* after the incident occurred. As a result, one charge has been filed against KiwiRail under HASWA.

Incidents on the Cook Strait ferries have led to several convictions for KiwiRail. In [October 2022](#) and [April 2023](#) the company was sentenced under HASWA after workers were seriously injured on the ferries. In 2021, MNZ also accepted an [EU](#) from KiwiRail following an incident on the *Kaiarahi*.

Victorian company and director sentenced for long-term bullying



"... no we don't have any problems with bullies."

A [signage firm and its director](#) have been sentenced in Victoria, Australia, after pleading guilty to a single charge each under the Occupational Health and Safety Act.

The charges were filed after an investigation found a subcontractor suffered verbal abuse, intimidation, and threats by the director over a period of four years. The subcontractor described feeling anxious and worn down by the abuse and developed a mental injury that left them unable to work.

The company was convicted and fined \$20,000 for failing to provide and maintain a safe system of work, while the director was convicted and fined \$20,000 for failing to take reasonable care as an officer of the company. Both were also ordered to pay combined costs of \$9,309.

The WorkSafe Victoria investigation found that the company's policies and procedures in place to address workplace bullying were inadequate as they did not provide information about how to report inappropriate workplace behaviour; did not provide definitions or examples of bullying; and workers had not been provided any training.

Inspectors who visited the workplace also found that the subcontractor was one of a number of workers who had been subject to the director's inappropriate behaviour.

WorkSafe NZ defines bullying at work as repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm. It has a [comprehensive suite of guidance](#) on preventing and managing bullying in the workplace.

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