

Company officers are in a unique position to positively influence their organisation's health and safety performance because they "set the tone" from the top. This month, we look at refreshed guidance released by the Institute of Directors to assist officers in a governance role to exercise their duty of "due diligence" effectively. We also have two articles on recent prosecutions under the Health and Safety at Work Act. One arose after a motorcyclist rode into bungy cords strung across a road for moving stock. The other came about when a worker's arm was seriously injured in machinery on a mussel harvesting barge. Finally, we look at recent changes for our health and safety regulators with WorkSafe appointing a permanent Chief Executive and three new board members, and Maritime New Zealand taking over responsibility for regulating all of Aotearoa New Zealand's major ports.

## Institute of Directors releases refreshed health and safety governance guidance

One of the most significant changes in the Health and Safety at Work Act 2015 (HASWA) was the introduction of an obligation on an officer to exercise "due diligence" to make sure their organisation complied with its health and safety duties.

Officers include directors of companies (or people holding comparable positions in other entities), partners, and any other senior people in a position that allows them to exercise significant influence on the management of activities being carried out by the organisation (for example a CEO). The Courts have clarified that the due diligence duty is a personal obligation for each officer rather than a duty placed on them all collectively.

What due diligence looks like is very broadly defined in HASWA, and many officers may struggle to understand what is required of them in their specific situation.

The [Institute of Directors](#) (IoD), in association with the Business Leaders Health and Safety Forum, the General Manager Safety Forum, and WorkSafe, has now refreshed its earlier guidance on health and safety governance to assist officers to meet their duties and improve the health and safety performance in their organisation. Improving health and safety governance can also impact other areas of the organisation – leading to better work, a positive working environment and engaged, supportive workers.

The new *Health and Safety Governance: A Good Practice Guide* (the Guide) outlines a principles-based approach and a focus on understanding and managing risk. It explains that due diligence includes finding out about how work is done and understanding how risks are managed within the organisation, as well as considering other obligations on the PCBU such as worker engagement and overlapping duties. Crucially, it is not enough for officers to simply rely on what they are told. Officers need to be proactive and curious, ask questions, confirm their understanding, and seek to validate the information received.

Officers are in a unique position to influence their organisation's health and safety performance because they "set the tone" from the top. The Guide discusses how to enable capable leaders to integrate health and safety into curious and courageous discussions and decisions, that are context rich and demonstrate care for workers. This, in turn, will support the growth of an effective culture to drive improved performance.

The Guide offers practical examples of useful questions officers can ask as part of their due diligence role - including in smaller organisations where there is no formal board. It also includes examples of metrics that will support improved performance. It encourages a move away from the widely used lost time injury or recordable injury rates and notes that research has shown that such measures can be "random, non-predictive and not a helpful measure of health and safety."

Accompanying the Guide is an easily digestible Quick Guide and a self-assessment checklist.

In launching the Guide, IoD's General Manager of Governance Leadership Centre, Guy Beatson, observed that: "Courageous and honest conversations around the board table have the potential to improve our health and safety record more than further tinkering with regulations at a government level." He advocated for boards to take a lead by looking beyond the statistics to understand the entire health and safety ecosystem, understand the perspectives of their workers and incorporate these into board thinking, alongside the advice of industry experts.



## Sharemilkers prosecuted after motorcyclist hits bungy ropes strung across a public road

In March 2021, a motorcyclist was seriously injured when he rode into bungy ropes that had been strung across a public road to help relocate 800 cows.

The road had a 100kph speed limit, and the first warning the motor cyclist had about the ropes was when he saw them ahead of him. By then, it was too late for him to stop safely. He hit the ropes, came off his bike, slid along the road and hit a fence post. As a result, he was hospitalised with fractures to his rib and a laceration to his kidney.

WorkSafe's investigation found the bungy ropes had been across the road for about three hours, and only two workers were present on the farm. There was no warning sign in place in the direction the rider was travelling although NZTA requires farmers to install a temporary warning sign at an adequate distance ahead of a crossing when more than 50 animals are being moved.

The sharemilking company involved in moving the stock was prosecuted under HASWA. At [sentencing](#), the Judge observed that "this was an extremely obvious hazard with a simple method of avoiding it" and that "the blocking of a public road should ring significant alarm bells". A fine of \$220,000 was imposed on the company, and reparations of \$13,200 were ordered.

The company that owned the farm was also prosecuted for the same incident. It was fined \$211,700 and reparations of \$8,800 were ordered.

The NZTA Code of Practice on stock crossing and droving can be accessed [here](#).

## Mussel barge operator fined \$180,000 after worker caught in machinery

A [mussel barge operator](#) has been fined \$180,000 and ordered to pay reparations to a worker after the worker's arm was caught in machinery on a vessel. The prosecution was taken by Maritime New Zealand (MNZ).

The incident occurred on a mussel farm in Coromandel in January 2023. The worker was cleaning the inside of a mussel tumbler, which is a purpose-built piece of machinery used to clean mussels once they are stripped from the ropes. After each harvest, the tumbler is cleaned by hand to remove any debris. For obvious reasons, the tumbler should be turned off when cleaning takes place.

In this case, the tumbler did not have a control system in place to automatically turn off when the door was open.

The worker reached into the tumbler to remove a piece of seaweed. Meanwhile, another worker, who was in the cabin, went through the usual process of turning the vessel on, which immediately restored power to the tumbler. The victim's arm was still inside the tumbler and got caught in the fast-turning machinery causing significant injury.

After the incident, the operator had the engineering controls on the tumbler modified to prevent an incident like this happening again. The incident highlights that all machinery must be made as safe as reasonably practicable, regardless of its location and use.

## Recent changes in Aotearoa New Zealand's health and safety regulators

The last month has seen significant changes to WorkSafe's leadership. The Board has appointed a new [Chief Executive](#), Sharon Thompson, who previously worked as Executive Director, Transformation and Operational Delivery, at the Financial Markets Authority (FMA). Ms Thompson will drive the delivery of WorkSafe's new strategy and operating plan. In addition, Workplace Relations and Safety Minister Brooke Van Velden announced [three new appointments](#) to the Board of WorkSafe to fill vacant positions.

In another significant change for the regulators, from 1 July 2024, [MNZ](#) will become the primary regulator for the country's 13 major ports. MNZ says this will enable better engagement with many of the businesses on ports around all elements of their operation and support better management of high-risk activities, ultimately reducing harm to those working on ports.

The change was recommended by the [Port Health and Safety Leadership Group](#) in a review initiated after the deaths of two port workers in 2022. New Zealand's rates of death on ports are twice or three times those of the United Kingdom and Hong Kong. Compared to Australia, New Zealand has a similar number of fatalities, but Australia moves significantly more cargo.

WorkSafe retains responsibility for regulating major hazard facilities on ports and for managing authorisations and exemptions under HASWA. WorkSafe will also continue to regulate inland ports, and any activity explicitly named in legislation or regulations, such as in the Electricity and Gas Acts.

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