

*This month we report on two recent Maritime New Zealand prosecutions with very different outcomes. The first was against Lyttleton Port Company Limited and resulted in a significant \$480,000 fine and a Court ordered Adverse Publicity Order. In contrast, the second went to a trial that ended with a not guilty verdict for the skipper of the charter vessel 'Enchanter'. We also cover WorkSafe's media release on the tragic deaths of four farmers in quad bike rollovers in July, and an Industrial Manslaughter conviction in Queensland that led to a massive AU\$1.5 million dollar fine for a pool manufacturing company.*

## Skipper found not guilty after trial for Enchanter capsizing tragedy

On 20 March 2022, the 16-metre vessel *Enchanter* was returning to Mangōnuī from a charter fishing trip to the Three Kings. Ten people were on board - eight passengers, the skipper, and a deckhand. At about 8pm, the vessel was struck by a rogue wave, destroying the superstructure and capsizing its hull. Five people survived after an EPIRB (emergency position indicating radio beacon) was activated, and they were winched off the boat's debris by a rescue helicopter.

The skipper of the vessel was subsequently charged by Maritime New Zealand (MNZ) under sections 45 and 48 of the Health and Safety at Work Act 2015 (HASWA), alleging that he had breached his duties as a worker on the vessel, and put his passengers and crew at risk of serious injury or death. MNZ argued the skipper should not have left the Three Kings Islands and instead should have stayed for another night and returned the following

morning, as this would have eliminated the risk of the *Enchanter* being capsized by a large wave.

The skipper faced a judge-alone trial in May. On 22 July 2024, Judge Philip Rzepecky released his decision, which found the skipper **not guilty** of the charge. He found that the tragedy could have been a terrible and unforeseeable accident. It was caused by a significant rogue wave in otherwise benign conditions, and the Judge could not be sure the skipper could have foreseen it given the information he had at the time. Further legal commentary on the case can be found from McElroys [here](#).

The case highlights the importance of being able to fund an expert defence and go to trial where there are arguable and reasonable doubts about the strength of a prosecutor's case. VL's [Statutory Liability policies](#) will cover defence costs in most situations.

## Four farmer deaths prompt WorkSafe to issue quad bike warning

Last month saw four farmers across Aotearoa New Zealand lose their lives in quad bike rollovers. The first fatality occurred on 18 July in Wairarapa. It was followed by another on 22 July in Canterbury, one on 26 July in Southland, and then a further death in Northland on 30 July. All four incidents coincided with the start of lambing and calving season.

WorkSafe is investigating all four fatalities. In a [media release](#), it reminded farmers that doing a risk assessment of the terrain and tasks must be the top priority before getting on a quad bike. It added that variable weather and growth, and variable ground conditions were common at this time of year, and sloped surfaces and steep terrain can be especially problematic.

Farm vehicle incidents are one of the top two causes of workplace deaths. **Eight** people died in vehicle incidents in the agricultural sector from July 2022 to June 2023.

WorkSafe recommends farmers to consider installing a crush protection or a rollover protection device on their quad bike, wear a helmet, ensure the quad bike is the right vehicle for the job and that workers are competent to operate it, prioritise maintenance, including of brakes and tyres, and remember that tired people make mistakes. More information on the safe use of quad bikes is available from [WorkSafe](#).

## Lyttleton Port Company fined \$480,000 after the death of a stevedore

The Lyttleton Port Company Limited (LPCL) has been fined \$480,000 and ordered to pay costs of \$35,000 following the death of a stevedore in April 2022. MNZ also sought and obtained an [adverse publicity order](#) under section 153 of HASWA to deter LPCL from further offending and to raise awareness of the risks of exposing workers to high-risk plant with inadequate controls and safe systems of work. An [adverse publicity order](#) holds the defendant to account by directing them to inform the public of the outcome of

prosecution and how they have had to change their conduct. This must be done in the manner directed by the court order.

The victim was killed after being struck and buried by coal while loading a ship. LPCL exports 1.2 million tonnes of coal each year.

After the coal arrives at the port, it is loaded by conveyors to a ship-loader. It then travels up the ship-loader on conveyor belts before dropping down onto the jet-slinger, a conveyor belt which fires the coal into the hold of a ship.

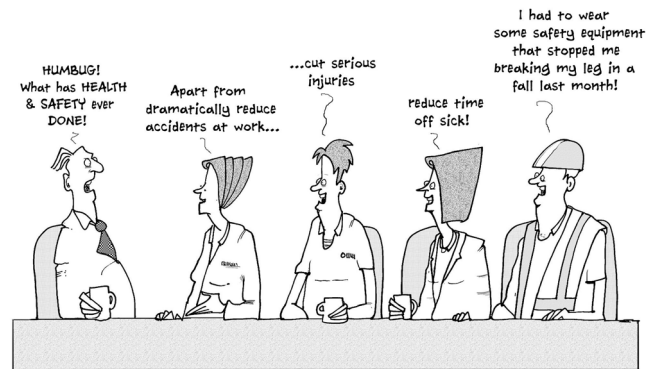
At the time of the incident, the victim was working as a hatchman, stationed on the deck of the ship in accordance with LPCL procedures, and giving directions by radio to the operator of the ship-loader about the placement of the coal. There was no separate radio channel for their communication and the ship-loader operator could not see the loading zone and did not have any cameras to assist him.

Without instruction from the victim or knowledge of the ship-loader operator, the jet-slinger started to rotate towards the victim and began shooting coal onto the deck. There were no engineering controls in place to prevent the coal from firing outside the hatch and no emergency stop control for the victim to activate.

The victim was killed when the jet-slinger stopped rotating as the stream of coal was directed to where he was standing, striking him, and causing him to fall from his viewing area. Because the ship-loader operator could not see the victim, the jet-slinger continued to fire in his

direction for a further two and a half minutes, burying him in the coal.

**MNZ** said that since the incident, LPCL has made changes to reduce the risk of hatchmen being struck by coal. These include hatchmen standing in a designated safe zone, rules around when the coal can be poured to keep workers safe and increasing CCTV overview. It also said there has been **significant work** across the ports sector to improve health and safety.



### Third conviction for Industrial Manslaughter in Queensland results in AU\$1.5 million fine

A Queensland pool manufacturing company has pleaded guilty and been fined AU\$1.5 million in the State's third **Industrial Manslaughter conviction** since the offence became available.

The charge arose after a worker's death at the pool manufacturer's factory. On 19 August 2021, the victim was acting as a dogger while the crane operator used the mobile crane to move a 650kg fibreglass pool. The crane operator drove forward, and the victim walked holding the tether line between the crane and the suspended pool. The victim was struck by the crane and knocked to the ground. The crane operator continued driving over the top of the deceased, and, after feeling a bump and not being able to see the victim, reversed. Despite attempts by colleagues and paramedics to save him, the victim died shortly after.

The subsequent workplace investigation revealed that the company did not have a traffic management system, did not have a safe work method statement, or documented safe operating procedure for the operation of the crane, did not have a procedure in place for exclusion zones and did not provide training on dogger or rigging duties. Spotters were not used, and there was no system of communication between the dogger and crane operator.

It also revealed that the facility manager was aware of the practice of doggers walking in front of the crane.

In addition, the mobile crane operator involved in the incident had a history of driving the crane at speed, resulting in him being warned on several occasions by colleagues to slow down. Three months before the incident, he hit a parked car with the crane, and on the day of the incident, he was challenged about driving the crane too fast. His manner of driving had previously been raised with the facility manager.

In Aotearoa New Zealand, moves to create Industrial or Corporate Manslaughter offences are gaining momentum. Labour's health and safety spokesperson, Camilla Belich MP, introduced the **Crimes (Corporate Homicide) Amendment Bill** to Parliament in April this year. The Bill would introduce a new criminal offence that provides that a person or entity will commit the offence if they have a relevant legal duty of care, and engage in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury, are reckless as to that risk, and their conduct results in the death of the individual. At this stage, the **Bill** does not have sufficient support amongst MPs to progress.

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