

In this month's issue, we cover the sentencing of KiwiRail after Interislander ferry Kaitaki lost all propulsion as it approached Wellington Harbour in January 2023. We also look at three other health and safety prosecutions including the first conviction of a safety consultancy under the Health and Safety at Work Act (HASWA), a rare prosecution taken under the old Health and Safety in Employment Act following a tragic death at a church, and the prosecution of a marina operator in Queensland which resulted from an incident where a member of the public fell from a walkway. In addition, we highlight both an urgent WorkSafe warning for dairy farms on the dangers of slide pulsators and WorkSafe's new Priority Plans that set out which sectors can expect more attention from the regulator over the next two years.

KiwiRail sentenced after Interislander ferry Kaitaki lost propulsion near Wellington harbour

Over 800 people were on board the Kaitaki Interislander ferry when it lost all propulsion as it approached Wellington Harbour in January 2023. As the vessel lowered its anchors, a strong southerly wind was blowing, with gusts up to 45 knots and swells of three metres. The vessel issued a mayday. Passengers were called to muster and lifejackets were issued.

Onboard engineers immediately began repair work and managed to restore power about 2 hours later. The vessel, escorted by two tugs, sailed into Wellington without further incident and all passengers were able to safely disembark.

A subsequent [Transport Accident Investigation Commission](#) (TAIC) investigation found that the incident was caused by the rupture of a safety critical rubber expansion joint in the cooling water system. As cooling water was lost, the Kaitaki's main engines shut down, leaving the ferry adrift. The expansion joint was manufactured in 2005 and installed on the Kaitaki in 2018 meaning that at the time of the incident, it was 18 years since its manufacture. The manufacturer told TAIC such safety critical components should be replaced after 5 years and be no older than eight months when installed.

[Maritime New Zealand](#) prosecuted KiwiRail under HASWA after concluding that there was poorly managed

maintenance and processes on the vessel. Earlier this month, KiwiRail pleaded guilty, was fined \$412,500 and ordered to pay \$20,000 costs.

The prosecution again highlights that even where there is no injury, the potential for harm can still lead to a significant fine under HASWA. In this case, if the anchors had not held while repairs were made, the vessel could have grounded at Sinclair Head.



"Look, personally I've got no problem with the albatross but you know how 'Health and Safety' play up, Simon..."

First prosecution of safety consultancy results in \$70,000 fine

The first safety consultancy to be [prosecuted](#) under HASWA has been fined \$70,000 for its part in an incident that left a Taranaki worker with a traumatic brain injury. Reparations to the victim of \$28,403 were also agreed to as part of sentencing.

The consultancy gave paid health and safety advice to the employer of the victim, who was hit from behind by the bucket of a telehandler in August 2020. He suffered two brain bleeds, permanent loss of taste and smell, and was diagnosed with post-traumatic stress disorder.

The consultancy had identified a "desperate need" for a traffic management plan and had undertaken to provide one but hadn't done so by the time of the collision six months later. A WorkSafe investigation found no steps

were taken to manage the risks of uncontrolled traffic, aside from a small sign about speed at the entrance.

After sentencing, WorkSafe said that businesses paying for specialist health and safety advice need the right consultant helping in the right way to get the right outcomes for workers. The Health and Safety Association (HASANZ) [register](#) is a source of professionals who can give expert advice.

[Two other companies](#) were jointly sentenced in relation to the same incident in 2022. They were fined \$270,000 and reparations of \$50,000 were ordered. Information on how to manage traffic on sites to minimise the risks to workers and others can be found on WorkSafe's [website](#).

Substandard installation of roller grille door leads to prosecution after the death of a pastor

In January 2022, a youth pastor was trying to close a powered roller grille door at a West Auckland church by using the hand chain as the motor was not working. Tragically, the 273-kilogram roller fell from its fixings, crushing and killing her.

A [WorkSafe investigation](#) found the installer had failed to ensure that the appropriate type of fastener was used. The roller was fixed through a piece of plywood and gib board with coach screws that were too short to properly hold its weight. The length of the screws at one end of the roller door failed to comply with the [Building Code](#).

The installation company was prosecuted and sentenced last month to a fine of \$41,250. Substantial reparations of

\$162,000 were also ordered. Because the grille was installed in 2009, before HASWA came into force, the company was charged under the old Health and Safety in Employment Act 1992. A similar failure today would be subject to the much higher penalties under HASWA.

WorkSafe said that the case was a stark example of how serious the consequences of poor workmanship can be. It said businesses have a responsibility to consider the health and safety of the people who will ultimately be reliant on their product's safety when installing, building, or commissioning structures for use at work.

Warning about slide pulsators in dairy sheds following the death of a farmer

WorkSafe has issued a [warning](#) to the dairy industry following the death of a farmer in a Waikato milking shed in July. The 61-year-old victim died after his clothing became entangled in the rotating bar of a slide pulsator.

WorkSafe said they are extremely concerned about the risk posed by exposed moving parts on slide pulsators and are urging farmers to check that their set-up is safe or bring in a specialist for advice.

WorkSafe releases its priority plans for the next two years

Construction, manufacturing, forestry, and agriculture can expect targeted engagement and enforcement activities from WorkSafe over the coming two years, according to the regulator's [new priority plans](#) for the sectors. WorkSafe also released a permitting priority plan covering specific high-risk work such as mining, adventure activities, and some work involving hazardous substances.

The priority plans are part of [WorkSafe's strategic reset](#). WorkSafe says the new [strategy](#) simplifies how WorkSafe

will deliver its main role, which is to influence businesses and workers to meet their health and safety responsibilities and to hold them to account if they don't.

It is expected that the priority plans will mostly guide WorkSafe's planned and proactive work. Those workplaces that fall outside the plans may still expect WorkSafe to investigate serious incidents arising from their work and take enforcement action if failings are identified.

Fall from walkway leads to Queensland marina operator prosecution

A [Queensland marina operator](#) has been ordered to pay a fine of AUS70,000 after a visitor to its marina was injured in February 2022. One person in a group walking along a marina walkway fell approximately two metres through a gap between a gangway and the central jetty, landing on the pontoon below the gangway. They then rolled into the water, floating face down. The person was rescued but sustained injuries including loss of consciousness, bruising and irritation from ingesting the water. After the incident, protective metal guarding was installed across the gaps between the gangways and the central jetty.

The prosecution highlights that all businesses – even those where working at height is not a core activity – must identify and minimise the risk of falls in their workplace. Falls from height remain a significant source of harm to workers and members of the public in Aotearoa New Zealand. In the first six months of this year, [falls from height](#) at work killed three people in this country. From [July 2022 to June 2023](#), 12 people were killed by falls, including two members of the public.

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