

In this issue, we cover four recent sentencings: two under the Health and Safety at Work Act 2015 (HASWA) and two under the Resource Management Act (RMA). The first HASWA sentencing resulted from a fatal road crash involving driver fatigue. The other followed injuries to a worker when they were crushed between a barge and a wharf. The RMA sentencings led to record fines being imposed after the parties involved continued to offend even after having enforcement actions taken against them by councils. We also cover the joint feedback to the government from major business groups, health and safety organisations, and unions expressing their shared view that HASWA is “fundamentally fit for purpose” and change is unlikely to significantly improve outcomes.

Road crash costs long-haul trucking company almost \$540,000 after fatigue prosecution

Shortly after 11am on 4 March 2021, a long-haul truck failed to take a corner on State Highway 4 in the central North Island and tipped over. The driver was stuck inside the cab. The vehicle caught fire and tragically, the driver was killed.

In the preceding days, the driver left Lower Hutt in the morning to travel around the Lower North Island and he reached Masterton just before quarter past midnight. He then began work the following day at just before seven and travelled around the North Island before delivering goods in Auckland, reaching the Otahuhu depot at just after half past five in the evening.

At the Otahuhu depot the defendant’s manager asked the driver to take a rest break before leaving for Wellington as he was aware that a break was going to be required. That requirement was not enforced.

The victim and another driver then decided to travel in convoy with the other driver going in front because the victim did not know the road to Taumarunui and had only driven it once before. The crash occurred as the driver was descending a hill and failed to take a sign posted 55 km per hour bend in the road.

WorkSafe investigated the crash. There was no suggestion that the driver was under the influence of drugs or alcohol, and neither was he suffering from any medical conditions that meant he should not be driving. There was no suggestion of any problem with the truck that he was driving.

WorkSafe’s investigation did identify that there was excessive driving hours involved, and the company did not make sure that appropriate rest breaks were taken. The records leading up to the crash also showed a persistent trend of breaches of the work and rest time requirements.

The company had a safe operating procedure for its drivers to use; a health and safety manual and a fatigue management policy which identified fatigue as a significant workplace risk. It seems the driver may have been given a copy of the policy but there is no indication that he received any proper training or explanation of its purpose and the need for its enforcement. Nor were there any records of the management level being trained in or receiving fresher training in that policy leading up to the incident.

The company also failed to take any steps to verify that the records that were being provided by drivers were accurate and to ensure that drivers were in fact complying with the policies that the company had put in place.

The Judge [commented](#) that: “Essentially this is a situation where a system was created but there was just a singular failure to audit it to make sure there was compliance to deal with a very real, albeit silent, danger for its drivers.”

Fatigue is a well-known hazard, giving rise to impaired judgment, reaction times and appreciation of risk factors. This may lead to errors, and an increase in workplace incidents.

The trucking company was in liquidation at the time of sentencing, but the judge still imposed a fine of \$366,000, saying that the fine was “...essentially symbolic and reflects the need to deter and denounce this conduct in the defendant but also in others, to drive home the message of the need for appropriate steps to be taken to manage these kinds of risks.” Reparations of \$150,000 were also ordered along with costs of \$23,916.44 to be paid to WorkSafe.

The prosecution again underscores that it is not enough to simply have a paper health and safety management system in place. Policies and procedures must be clearly communicated to staff, and compliance with them monitored, verified, and enforced.



“Not enough money is being spent on safety, so be careful.”

Business groups, H&S organisations and unions send shared letter to Govt on reforms

In June this year, the Minister for Workplace Relations and Safety, the Hon. Brooke van Velden, announced the start of consultation on [reforming work health and safety](#) law and regulations.

Business New Zealand, the New Zealand Institute of Safety Management, the Health and Safety Association of New Zealand, the Business Leaders' Safety Forum, the CTU and others have now jointly written to Minister van Velden to make three recommendations on health and safety reform.

These are:

- Better system leadership and coordination.
- Improving and investing in WorkSafe.
- Better regulations and guidance.

They also expressed their shared view that the Health and Safety at Work Act 2015 is fundamentally fit for purpose and change is unlikely to significantly improve outcomes, although they said they will work constructively with the Minister and officials to identify improvements. A copy of the full letter is available on the CTU [website](#).

Two RMA sentencings lead to large fines for persistent offending

Two recent RMA sentencings have resulted in record fines for the offenders after they continued to breach the Act following enforcement actions and warnings from councils.

A [Waikato farming company](#), a company director and a farm manager have been convicted and fined a combined \$305,900 on 14 charges covering unlawful discharges of dairy effluent into the environment, and contravention of abatement notices, on numerous occasions between August 2022 and June 2023. This is the largest fine for discharging contaminants into the environment in the Waikato region since the RMA was introduced over 30 years ago.

In addition to the fines, the Judge issued an Enforcement Order against the company requiring them to upgrade the farm effluent system and implement an effluent management plan to avoid further adverse effects on the environment.

In August 2022, Waikato regional Council officers conducted an inspection at the dairy farm at Ngātea, on the Hauraki Plains. They found numerous breaches related to the discharge of dairy effluent from two effluent ponds, a sump and a stock underpass. Two abatement notices were issued to the defendants by the council to prevent further discharges into the environment. However, during follow

up inspections over the next 10 months, additional breaches were identified.

In a second case in [Auckland](#), a contractor has been fined \$144,500 and ordered to pay \$11,575 in reparations to his neighbour for extensive violations of the RMA involving illegal earthworks and environmental contamination at his Drury property.

The contractor was convicted on three charges, including breaching an abatement notice, depositing contaminated fill, and conducting unauthorised earthworks exceeding legal limits. The fine is the largest handed down to an individual in recent years for breaches of the RMA.

The court heard that between 2015 and 2022, the contractor allowed illegal earthworks on his property, depositing over 33,900 cubic metres of contaminated fill, far exceeding the permitted consented limit of 5,000 cubic metres. The fill was found to have travelled onto neighbouring properties, causing land instability and damaging ecosystems. Hazardous materials including asbestos, arsenic, and lead was found in the fill.

The Judge emphasised the defendant's culpability, noting he ignored repeated warnings and enforcement actions, including abatement notices and infringement notices from Auckland Council.

Barge company fined \$250,000 after worker crushed when berthing

A [mussel barge operator](#) has been fined \$250,000 and ordered to pay costs of \$10,000 after a worker was crushed between a barge and a wharf pile at Lyttleton.

The company had installed nails in the wharf piles to secure the lines from the barge to the wharf. This meant that sometimes crew members had to lean over the side of the barge to tie and untie the lines of the vessel while berthing.

On the day of the incident, the victim was leaning over the railing and attempting to untie the line. The barge drifted back into the wharf and crushed the victim's head and neck between the side of the barge and the wharf pile.

Maritime NZ commented after sentencing that it was an incredibly serious incident, and it was very fortunate there was not a fatality.

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