

# WHS Law Briefing

July 2025



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## Key issues and trends

Welcome to our WHS Law Briefing. This briefing identifies key issues and emerging trends in WHS Law, and details significant legislative and case law developments from February to date in July 2025. Please contact our national WHS team if you would like to discuss any of the matters in this briefing or would like any source materials which have not been included. We welcome your feedback.

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<b>SafeWork NSW introduces 'High Risk Workplaces and Repeat Offenders Program'</b>	SafeWork NSW has established a High Risk Workplaces and Repeat Offenders Program for duty holders who have been identified as having an elevated risk profile and are considered most in need of regulatory oversight and intervention. Program guidelines have been published by SafeWork NSW, however the consequences for PCBUs who are identified for inclusion in the Program (including where enforcement action is subsequently taken by SafeWork NSW) remain to be seen.
<b>Restructures and other industrial relations matters leading to WHS regulator investigations</b>	We are increasingly seeing WHS regulators investigate the management of psychosocial hazards in the context of restructures, which are identified as a source of psychosocial hazard in WHS Codes of Practice. For example, Cobar Management Pty Ltd has entered into an enforceable undertaking as an alternative to a WHS prosecution for allegedly exposing workers to psychosocial hazards in the context of a restructure, and it has been reported that SafeWork NSW has issued a notice to a university regarding its restructuring plan. We have also seen examples of WHS regulators investigating other "industrial relations" matters, such as work and rest periods and consultation with workers regarding changes to reporting lines.
<b>Principal Contractor appointment in renewable energy developments</b>	In our upcoming article "Principal Contractor appointment in the renewable energy sector" we examine the challenges faced by developers in respect of Principal Contractor appointment when using a "split contract" model instead of the traditional "EPC contract model". In a split contract model, the developer contracts directly with multiple specialised contractors for separate packages of work, whereas in the traditional EPC model a single contractor takes full responsibility for the engineering, procurement, and construction aspects of a project.
<b>Global WHS trends and issues</b>	In our recent article " <a href="#">Global WHS trends</a> " we examined four key issues and trends affecting organisations globally from a work health and safety perspective, both now and in the future: global WHS regulation; the rise of technology; changing workforce populations and structures; and psychosocial hazards and risks.

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# Legislative updates

## Commonwealth / National

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### New Code of Practice on sexual and gender based harassment

The Australian Government has approved the WHS Code of Practice '[Sexual and gender-based harassment](#)' under section 274 of the Work Health and Safety Act 2011 (Cth) (Cth WHS Act). The new Code is based on Safe Work Australia's model code of practice of the same name, with some differences including references to the psychosocial hazards of fatigue, intrusive surveillance and job insecurity, and the requirement to apply the hierarchy of controls when managing psychosocial hazards, which has been excluded in some states and territories but applies in the Commonwealth jurisdiction.

### New incident notification requirements under development

Safe Work Australia has considered public feedback on the incident notification requirements under the model Work Health and Safety Act (WHS Act) and has announced that changes to these requirements are being developed. The purpose of the changes is to ensure the incident notification requirements capture incidents, injuries and illnesses that are emerging from new work practices, industries and work arrangements, and to provide WHS regulators with appropriate visibility of work-related psychological injuries and illnesses. Updates regarding the changes are published on Safe Work Australia's website [here](#).

### Offshore oil and gas regulations commence

The [Offshore Petroleum and Greenhouse Gas Storage \(Safety\) Regulations 2024](#) (Cth) commenced on 12 June 2025, following amendments to the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth) in December 2024. The National Offshore Petroleum Safety and Environmental Management Authority has published information regarding the new regulations which can be accessed [here](#).

### Draft biological hazards code of practice

Safe Work Australia has released the draft model WHS Code of Practice, [Managing the risks of biological hazards at work](#), for feedback, with [submissions](#) due by 4 September. For the purposes of this Code, biological hazards are substances and agents of biological origin, such as from humans, plants and animals, that pose risks to human health. The draft code provides practical guidance to assist duty holders in identifying, and implementing, the most effective ways to manage the risks of biological hazards in the workplace, including viruses, bacteria, parasites, prions and some types of fungi (including mould), allergens, irritants and toxins.

### New WHS code of practice for healthcare and social assistance industry

Safe Work Australia has published a new WHS Code of Practice [Healthcare and social assistance industry](#), which provides guidance for duty holders such as employers in the healthcare and social assistance industry on how to meet their work health and safety duties and manage risks in their workplaces. The model code focuses on hospitals, aged care and disability support, and includes home-based settings.

### Guidance on workplace exposure limits

Safe Work Australia has released a [guidance document](#) on changes to workplace exposure limits that will take effect from 1 December 2026, as well as a series of infographics regarding the changes, which can be accessed at Safe Work Australia's new [airborne contaminants hub](#).

## Changes to blood lead thresholds

The blood lead threshold under the Work Health and Safety Regulations 2011 (Cth) (Cth WHS Regulations) was lowered on 25 March 2025 to bring it into line with the blood lead threshold in other harmonised jurisdictions. The changes were made under the [Work Health and Safety Amendment \(Blood Lead Level Exposure Values\) Regulations 2025](#).

## Changes to Load Restraint Guide

The National Heavy Vehicle Regulator (NHVR) has published the [2025 Load Restraint Guide](#), which incorporates minor administrative changes outlined in the NHVR's [amendment summary](#). The NHVR has also released a [discussion paper](#) to seek feedback regarding the next edition of the Load Restraint Guide. [Submissions](#) are due by 12 September.

## Penalty increases under Cth WHS Act

The maximum fines for Category 1, 2 and 3 offences under the Cth WHS Act increased on 1 July 2025 pursuant to the [Work Health and Safety \(Public Notification of Indexed Penalty Amounts\) Notifiable Instrument 2025](#). The changes mean that the maximum penalty for a Category 1 offence is over \$17,000,000, close to the maximum fine of \$18,000,000 for the offence of industrial manslaughter.

## Guidance on online abuse

Safe Work Australia has published [new guidance](#) on online abuse in the workplace. The guidance encourages PCBUs to refer to the [eSafety Commissioner website](#) for practical steps PCBUs can take to prevent online abuse at their workplace.

## Safe Work Australia's performance update and research strategy

Safe Work Australia has published its [One-year performance update on the Australian Work Health and Safety \(WHS\) Strategy 2023–2033](#) and the [WHS prosecutions dashboard](#) which now includes the latest WHS prosecutions data from 2024. Safe Work Australia has also published its [Research and Evaluation Strategy](#), which will drive its prioritisation of research and evaluation activities. Primary focus areas identified in the strategy include psychosocial harm prevention and recovery, advances in technology and the changing nature of work.

## Comcare Year in Review 2024

Comcare has published the [Work Health and Safety – Year in Review 2024](#) which outlines Comcare's compliance and enforcement activities during 2024. The review confirms Comcare's regulatory priorities of WHS management systems, psychosocial hazards, silica, hazardous manual tasks, contractor management and being hit by moving objects, and highlights various regulatory programs, including major infrastructure projects, telecommunications asbestos safety, Comcare's family liaison service and Comcare's Psychosocial Inspection Program.

## Construction industry blueprint for the future

The National Construction Industry Forum has developed a [draft Blueprint for the future of the building and construction industry](#), which aims to set a path to address challenges and build a stronger construction industry. In relation to health and safety, the draft Blueprint identifies poor mental health outcomes, substance abuse, gender-based violence and high levels of suicide as "priority challenges" affecting the construction industry, and makes a number of recommendations as to how these challenges can be addressed.

## New South Wales

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### SafeWork NSW established as an independent regulator

From 1 July 2025, SafeWork NSW has been formally established as an independent regulator under the [Work Health and Safety Amendment \(Standalone Regulator\) Act 2025](#) (Standalone Regulator Act). The Standalone Regulator Act also introduces:

- A dedicated SafeWork Commissioner, responsible for leading the regulator and setting its strategic direction.
- Reporting requirements for the SafeWork Commissioner, including that it must report every six months on the achievements, challenges, program management and regulatory engagement of SafeWork NSW, including in relation to the High Risk Workplaces and Repeat Offenders program mentioned below.
- A newly formed SafeWork Advisory Council, tasked with monitoring emerging risks and advising on regulatory priorities.
- Structural changes that remove SafeWork NSW from the Department of Customer Service, establishing it as a standalone agency.

### SafeWork NSW's High Risk Workplaces and Repeat Offenders program

SafeWork NSW has established a '[High Risk Workplaces and Repeat Offenders Program](#)' for duty holders who have been identified as having an elevated risk profile and are considered 'most in need of regulatory oversight and intervention.'

[Program guidelines](#) have been published by SafeWork NSW, however the consequences for PCBUs who are identified for inclusion in the Program (including where enforcement action is subsequently taken by SafeWork NSW against participants in the Program) remain to be seen.

The High-Risk Workplaces and Repeat Offenders program list and a summary of action under the program will be published every six months, in accordance with the reporting requirements under the Standalone Regulator Act mentioned above.

### Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025

The Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025 passed through Parliament on 27 June 2025 and received assent on 3 July 2025. The Act amends the Industrial Relations Act 1996 (NSW) in relation to bullying at work and sexual harassment in connection with work, and amends the Work Health and Safety Act 2011 (NSW) (NSW WHS Act), including to:

- Allow a proceeding for an offence to be brought after the end of the applicable limitation period with the leave of a court, if the court is satisfied the granting of the leave is in the interests of justice.
- Make it mandatory for PCBUs to comply with approved codes of practice, or manage hazards and risks in a way that provides a standard of health and safety that is equivalent to or higher than the standard required under the code of practice.
- Allow unions to initiate prosecutions after consultation with SafeWork NSW.
- Allow union officials to take photos, videos and measurements, or conduct tests, directly relevant to suspected WHS contraventions at work sites.
- Mandate that PCBUs notify SafeWork NSW after being issued with a provisional improvement notice.
- Allow PCBUs, workers, health and safety representatives and unions to refer WHS disputes directly to the Industrial Registrar.

Further information regarding the Act is available [here](#).

## Discussion paper on changes to regulation

In February 2025, SafeWork NSW published a [discussion paper](#) calling for feedback on proposed amendments to the Work Health and Safety Regulation 2017 (NSW) (NSW WHS Regulation). SafeWork NSW has said that it will review submissions and carefully consider any issues, and that if necessary, the NSW WHS Regulation will be amended to address issues raised in the consultation process.

## Changes to Codes of Practice

The NSW Government has updated three Codes of Practice made under the NSW WHS Act and the Work Health and Safety (Mines and Petroleum Sites) Act 2013 for mines:

- [Electrical engineering control plan](#)
- [Emergency planning for mines](#)
- [Mechanical engineering control plan](#)

SafeWork NSW has also released draft updates to the "[Moving plant on construction sites](#)" and "[Overhead protective structures](#)" codes of practice and invited public comment.

## SafeWork NSW's proposed regulatory priorities 2025-2026

SafeWork NSW published its [Annual Regulatory Statement](#) on its regulatory priorities for 2025-26, being falls from heights, harms to workers in the health care and social assistance sector, psychosocial risks including sexual harassment (with a particular focus on the government sector), hazardous substances, and injury from mobile plant, vehicles or fixed machinery.

## NSW Budget WHS package

As part of the NSW 2025-2026 budget, the NSW Government has announced a \$127 million package over the next four years to address psychosocial hazards and compliance and enforcement of safe work practices. See the Ministerial Media Release regarding the Budget announcement [here](#).

## New taskforce and crystalline silica requirements

In March 2025, the NSW Minister for Work Health and Safety [announced](#) that the government has established a new expert Taskforce to oversee and address the silica related health risks for workers in tunnelling projects in NSW. Four broad areas of action identified for the Taskforce include:

- Better use of data and more transparent access
- Improved health monitoring
- Best practice work health and safety controls
- Enhanced compliance

Updates from the meetings of the taskforce are published on the [SafeWork NSW website](#).

## Final report into 2024 Review of Dust Diseases Scheme

The Standing Committee on Law and Justice has published its [final report](#) into the '2024 Review of the Dust Diseases Scheme.' Recommendations in the final report include that SafeWork NSW implement, as soon as practicable, the necessary regulations to commence the Silica Worker Register, that SafeWork NSW update the Code of Practice for Tunnels Under Construction to include the mandatory use of Powered Air Purifying Respirators in all tunnelling projects; that the NSW Government consider developing a consistent safety standard on the management of respirable crystalline silica for NSW Government funded tunnelling projects; and that the powers of workplace entry permit holders be strengthened. The NSW Government is required to provide an official response to the review report by 19 September 2025.

## First Responders Mental Health and Wellbeing Strategy

The NSW Government has published the [2025-29 NSW Mental Health and Wellbeing Strategy for First Responders](#) which outlines the actions that NSW first responder organisations will take to support the mental health and wellbeing of their personnel.

## Mandatory sexual harassment prevention training

The NSW Government has [introduced](#) mandatory sexual harassment and sexual violence prevention training for all hospitality staff and liquor licence holders, as part of an update to the Responsible Service of Alcohol (RSA) training program.

## New Guide and Order published by NSW Resources Regulator

The NSW Resources Regulator has released the new technical reference guide, [Roads or other vehicle operating areas – principal hazard management plan for surface mining operations](#). It has also made the [Standards for Breathing Apparatus to Assist Escape \(Including Self-Rescuers\) Order 2025](#), to outline the standards that breathing apparatus need to meet in order to be registered under the State Work Health and Safety (Mines and Petroleum Sites) Regulation 2022.



## Queensland

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### WHS changes paused by Queensland Government

The Queensland Government has paused a number of planned changes to work health and safety laws following the change of Government in October 2024, including:

- Changes to the Anti-Discrimination Act 1991 which were scheduled to take effect on 1 July have been paused to allow the Government time to consult on the legislation and amend it where required. The changes that were scheduled to commence were included in the Respect at Work and Other Matters Amendment Act 2024 and included explicitly prohibiting conduct that creates “hostile” workplace environments. The decision to delay the changes was [announced](#) by the Queensland Government on 14 March 2025.
- New laws empowering health and safety representatives and entry permit holders to access information from Workplace Health and Safety Queensland improvement, prohibition and non-disturbance notices have been postponed until 29 March 2026. This delay was made through the [Work Health and Safety and Other Legislation Amendment \(Postponement\) Regulation 2025 - Queensland Legislation - Queensland Government](#).

### Requirement for written prevention plan for sexual harassment commences

The requirement for Qld PCBUs to develop and implement a written prevention plan to manage the identified risks to health and safety from sexual harassment and sex or gender-based harassment at work commenced on 1 March 2025. Work Health and Safety Queensland has published a range of [resources](#) regarding the new requirement.

### QBCC Amendment Bill

On 27 June 2025, the [Queensland Building and Construction Commission and Other Legislation Amendment Bill 2025](#) was introduced to the Queensland Parliament. The objectives of the Bill are to:

- Ensure a contemporary, modernised regulatory framework for the Queensland Building and Construction Commission (QBCC);

- Support the QBCC's transition in delivering more services digitally to improve efficiency and customer experience; and
- Streamline workplace safety notifications to improve productivity in Queensland's building and construction industry.

The Bill was referred to the State Development, Infrastructure and Works Committee for detailed consideration.

### Updates to Safe Working and Supervision Guide for Electrical Apprentices

The Queensland Electrical Safety Office has updated the [Safe working and supervision guide for electrical apprentices](#), to align with changes made by the State Electrical Safety and Other Legislation Amendment Regulation 2024, which commenced on 1 January 2025.

### Review of Resources Safety and Health Queensland

The Queensland Government has announced a comprehensive review of Resources Safety and Health Queensland (RSHQ), which will examine the role of RSHQ, and whether any modifications to the existing model, or any alternative model, would be more effective in ensuring and improving resources safety and health outcomes. The Queensland Government has published a statement regarding the review [here](#) and the terms of reference for the review are available [here](#).

### Mining and Resources Coroner appointed

The Queensland Government has appointed a Mining and Resources Coroner to investigate deaths in the industry and make safety recommendations. The [Coroners \(Mining and Resources Coroner\) Amendment Bill 2025](#) has been introduced to Parliament and, if passed, will require the new coroner to undertake coronial investigations and inquests into all accidental deaths in workplaces like mines, mining railways, quarries, and petroleum and gas sites.

## South Australia

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### Consultation brief on noise regulations

In February 2025, Return to Work SA published a [consultation brief](#) on noise induced hearing loss and sought public submissions. The Minister's Advisory Committee will be involved in reviewing the feedback and considering next steps.

## Victoria

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### Energy Safety Amendment Act

The [Energy and Land Legislation Amendment \(Energy Safety\) Act 2025](#) passed Parliament in May 2025, expanding the powers of Energy Safe Victoria under energy safety legislation in Victoria. The Amendment Act also increases maximum penalties for certain offences under the Electricity Safety Act and the Gas Safety Act, and changes the requirements for specified operators of at-risk electric lines to submit bushfire mitigation plans to Energy Safe Victoria. Information regarding the changes published by Energy Safe Victoria is available [here](#).

### New Compliance Codes and guidance

The Victorian Government has approved:

- The Compliance Code [Metal casting](#), under the Occupational Health and Safety Act 2004 (Vic) (Vic OHS Act), which replaces the now revoked 2008 Foundries Code.
- The Compliance Code, [Engineered stone](#), which replaces the 2022 Code of the same name. The new Engineered stone code reflects the 2024 national ban on the use, manufacture and supply of engineered stone benchtops, panels and slabs, and outlines exceptions pertaining to specified work on already installed (legacy) engineered stone products.

WorkSafe Victoria has also published new [guidance](#) on how to create safe temporary timber guardrails to prevent falls from heights.

### Final report released after sentencing review

The Victorian Sentencing Advisory Council has released its final report: [Sentencing Occupational Health and Safety Offences in Victoria: Report and Recommendations](#). The report makes 12 recommendations, primarily aimed at increasing the use of sentencing orders other than fines (such as enforceable undertakings and adverse publicity orders), increasing maximum penalties and to introduce a legislated sentencing guidelines to improve consistency in sentences imposed. The report also recommends amendments to the Vic OHS Act, including to allow affected persons to make impact statements in sentencing proceedings and to provide a framework for restorative justice conferences to occur.

### Workplace surveillance report published

The Victorian Legislative Assembly Economy and Infrastructure Committee has handed down the [final report](#) of its [inquiry](#) into workplace surveillance. The report contains a number of findings and recommendations, including in relation to the health and safety risks associated with being monitored while in the workplace.

### New mental health hotline for Victorian workers

The Victorian Government has introduced the [Worker Mental Health Support Helpline](#), a free and confidential hotline for workers in businesses with fewer than 200 employees that don't have their own assistance systems in place.

## Western Australia

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### Changes to Codes of Practice

The Western Australian Government has:

- Approved the WHS Code of Practice, [Tower cranes](#), with minor variations to the national model version of the Code, including references to the duty under section [26A](#) of the *Work Health and Safety Act 2020* (WA WHS Act) owed by PCBUs that provide services relating to WHS.
- Approved the WHS Code of Practice, [Managing electrical risks in the workplace](#), which explains how PCBUs can satisfy their duties in relation to the management or control of electrical equipment, including electrical installations.
- Revoked the WHS Code of Practice on managing the risks of respirable crystalline silica from engineered stone in workplaces.
- Released the draft WHS Code of Practice, [Road and traffic management at Western Australian mines](#), to help PCBUs comply with the requirements of the *Work Health and Safety (Mines) Regulations 2022* in relation to planning, designing, constructing and maintaining roads and vehicle operations at mine sites. [Feedback](#) on the draft Code is due by 15 August.
- Published a [Statement of regulatory intent](#) regarding regulations relating to high risk work licences for the use of earthmoving machinery used as a crane.

### New regulations regarding vapes

New rules regarding e-cigarettes have been added to both the *Work Health and Safety (General) Regulations 2022* (WA WHS Regulations) and *Work Health and Safety (Mines) Regulations 2022*, including penalties of \$35,000 for PCBUs that allow people to smoke e-cigarettes in enclosed work areas, or fail to ensure persons at their workplace are not exposed to second-hand smoke from e-cigarettes. These rules already apply to traditional tobacco products like paper cigarettes, cigars and pipes. The changes have been made under the [Work Health and Safety Regulations Amendment \(E-cigarettes\) Regulations 2025](#). Western Australian employers have been urged to consult their workers on the new ban.

### Guides published for WA mine operators

WorkSafe WA has released a new [Guide](#) on Principal mining hazard management plans and [Guide](#) on Contractors engaged in mining operations, to assist mine operators and contractors at mines to understand their obligations under the WA WHS Act and the *Work Health and Safety (Mines) Regulations 2022* (WHS Mines Regulations). Two self assessment tools have also been published.

## Australian Capital Territory

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### Changes to Codes of Practice

The ACT Government has approved the WHS Code of Practice, [Tower crane](#), with an amendment relating to the ACT's express ban on high-low crane lifts (or "Christmas tree" lifts), where multiple loads are slung in a vertical configuration in one lifting operation.

### Guidance on notifiable sexual assault incidents

WorkSafe ACT has published [guidance](#) regarding whether certain behaviours meet the threshold for a notifiable sexual assault incident under the Work Health and Safety Act 2011 (ACT WHS Act).

### Mandatory asbestos training course

The ACT Government has made the [Work Health and Safety \(Working Safely with Asbestos Training Course and Occupations\) Declaration 2025](#) to update mandatory training requirements for workers who are likely to encounter asbestos-containing materials in the course of their jobs.

### Statement of priority areas for WorkSafe ACT

The [Work Health and Safety \(Office of the Work Health and Safety Commissioner\) Statement of Expectations 2025](#) was made in March 2025 and outlines the priority activities and initiatives for WorkSafe ACT over the next 12 months, including psychosocial hazards, complex supply and contractual chains, climate-related risks, hybrid work and occupational violence. The construction industry and the ACT Government will be priority industries for WorkSafe ACT.

## Northern Territory

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### Resources published regarding new positive duties

NT Worksafe has published new resources to assist PCBUs and workers to comply with the proactive anti-harassment requirement that is being enforced in the Northern Territory from 6 January 2025. The new resources are:

- [Employer's Guide to Meeting Positive Duty Requirements](#)
- [Worker's Guide to Workplace Sexual Harassment](#)
- [Positive duty checklist](#)

# Significant cases

## Commonwealth

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### Government agency charged following stabbing attack

A government agency has been charged with breaching its duties under the Cth WHS Act following an incident in March 2023 where an employee at a Melbourne service centre was stabbed in the back by a customer. The charge alleges the agency failed to undertake a range of measures to eliminate or minimise the risk of physical violence to workers, including:

- Providing at least two uniformed security guards at the workplace at all times.
- Managing entry to the workplace.
- Giving the service centre manager the authority to decide whether managed entry to the workplace should be implemented and remain in place.

## New South Wales

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### Psychosocial risk prosecution withdrawn

In April 2025, SafeWork NSW withdrew its prosecution of the Western Sydney Local Health District (WSLHD) for allegedly poorly handling an investigation into a patient incident, resulting in two nurses being exposed to the psychosocial hazard of poor organisational justice. The reason for the withdrawal has been discussed in media reports, however SafeWork NSW has not provided any public comment.

The withdrawal of the prosecution came weeks after the District Court made a [ruling](#) that statements made by the two nurses in relation to their subjective feelings (before they both died several weeks apart in November 2020) were admissible evidence in the trial.

### SafeWork NSW reportedly issues notice in respect of restructure

It has been reported that SafeWork NSW has issued a university with a “notice to give information” under the NSW WHS Act following an anonymous complaint regarding the university’s restructuring plan, including in relation to consultation efforts by management and psychosocial risks arising from the restructure.

## Enforceable undertaking after workers allegedly exposed to psychosocial hazards

Cobar Management Pty Ltd (CMPL) has entered into an enforceable undertaking valued at over \$1 million in lieu of prosecution by the Resources Regulator for allegedly exposing two workers (both accountants) to psychosocial hazards, including role overload (as a result of lack of staff, long working hours, demanding tasks, time zone issues associated with project work and inadequate fatigue management), role conflict and lack of role clarity (including the arrangement of meetings at short notice that clashed with other commitments), poor support and poor procedural justice. Metals Acquisition Limited took ownership of CMPL from its previous owners Glencore in 2023 and a number of notices were issued to CMPL by the Resources Regulator, both before and after the acquisition. Remedial actions implemented by CMPL to address the alleged failures include changes to its HR system and Fatigue Management Procedure aimed at preventing staff from working excessive hours (including a 'lock out system' where staff cannot log on to their computers between 9pm and 5am without a temporary exemption). Pursuant to the enforceable undertaking, CMPL has also committed to undertake various actions, including a Health and Safety Culture Survey, psychometric testing during the recruitment process for roles requiring high mental acuity, a leadership mental health support program, organising the NSW Metalliferous Mining Industry Psychosocial Safety Workshop and partnering with local schools to deliver the Resilience Project.

## Antisemitic behaviour investigated

It has been reported that SafeWork NSW has issued a preliminary report into antisemitism at a university, relating to whether the university took adequate actions to protect Jewish staff and students in the 11 months following the Hamas attack on Israel in October 2023.

## Three PCBU's acquitted of category 1 breaches

Three PCBUs have been **acquitted** of charges for breaching section 31 of the NSW WHS Act (Gross negligence or reckless conduct), after their conduct was found to be neither reckless nor grossly negligent. The charges related to an incident in May 2021 where a worker was seriously injured falling through a skylight while cleaning solar panels on the roof of a shop. The PCBUs who were charged were the two partners who operated the shop and a labour hire company that supplied employees to work at the shop.

In relation to gross negligence, District Court Judge Andrew Scotting heard that some administrative controls were put in place before the incident (e.g. a supervisor had taken the workers onto the roof to demonstrate how to do the task), and his Honour held "A PCBU that has identified a risk of death or serious injury and has taken some potentially effective but inadequate steps to control it, is less likely to be considered to have engaged in gross negligence."

Judge Scotting was also not satisfied that the test for recklessness had been satisfied, noting that the test for recklessness requires the prosecutor to "identify the key fact of which a PCBU was aware in order for it to be reasonable for the Court to infer, beyond reasonable doubt, that the PCBU foresaw that its actions might cause death or serious injury".

Two of the PCBUs pleaded guilty to alternative Category 2 offences under the NSW WHS Act. The third PCBU was also charged with an alternative Category 2 offence but was acquitted after Judge Scotting found it was prohibited by the business arrangement from allocating resources to safety or issuing instructions to workers.

### Three PCBU's acquitted of category 1 breaches

A PCBU has been **found guilty** of breaching its primary safety duty under the NSW WHS Act after a worker used hazardous chemicals near an ignition source and sustained serious burns. District Court Judge Scotting found that the mobile phone app which required workers to enter information before logging their start time of the job did not constitute an adequate risk assessment, finding that the app allowed workers to skip screens and on the day of the incident the worker didn't enter any required information, which showed the PCBU's requirement was not effectively enforced. Judge Scotting also found that the PCBU had failed to provide adequate training.

The PCBU was **fined** \$150,000 and ordered to pay 90 per cent of the prosecutor's costs. The PCBU avoided a 100 per cent costs order because the prosecutor had been required to withdraw some of the particulars of the charges, but didn't do so in a timely manner.

### Director found guilty of due diligence breach; self incrimination argument rejected

The sole director of AWB Contractors Pty Ltd (AWB), Paul Whitmarsh, has been **found guilty** of breaching his duty as an officer under section 27 of the NSW WHS Act and **fined** \$300,000, after a worker suffered fatal head injuries in January 2021.

Whitmarsh pleaded not guilty to the charges against him, asserting that SafeWork NSW's case wrongly conflated his duty to exercise due diligence under section 27 with his company's duties under section 19. However, Judge Russell found that the prosecutor's summons clearly set out four reasonable steps Whitmarsh personally should have taken to ensure AWB complied with its duties and obligations, in order for him to comply with his due diligence duty as an officer, and that the charges against Whitmarsh in fact "picks up the words" of subsection 27(5) of the NSW WHS Act.

In earlier proceedings, the District Court **dismissed** an argument by Whitmarsh that SafeWork NSW's subpoenas requiring production of safe work method statements and other documents would force him to abrogate his privilege against self-incrimination. Judge David Russell found that Whitmarsh could engage another person to answer SafeWork NSW's subpoenas, and taking such a step "would

involve no incriminatory admission" and "all it would show would be that a director of the corporation was ensuring that the corporation itself obeyed its legal obligations."

### Re-established NSW Industrial Court hands down first WHS sentence

The newly restored NSW Industrial Court has **fined** Hibernian Contracting Pty Ltd (Hibernian) \$180,000 after it pleaded guilty to an offence against the NSW WHS Act relating to an explosion that occurred at a Council depot in 2022. The explosion occurred when Hibernian's worker used a grinder to cut a pipe connected to a waste oil tank at the Council depot, so that the waste oil tank could be removed from a pit at the site, and sparks ignited triggering an explosion.

Justice Paingakulam heard that the removal of the waste oil tank from the pit was not a specifically allocated task, however his Honour said "I do not place any weight on the fact that removal of the Waste Oil Tank was not a task that was specifically allocated during the pre-work meeting on the day of the incident...Two other tanks had been removed on the morning in question, prior to the incident occurring... It is clear that Hibernian's workers had turned their attention to removing tanks from the Pit on the morning of 17 August 2022, notwithstanding what occurred at the pre-work meeting."

### Enforceable undertaking instead of prosecution for workplace fatality

Austip Recycling Pty Ltd has entered into an **enforceable undertaking** instead of being prosecuted for an offence against the NSW WHS Act relating to the death of a worker who was struck by a reversing vehicle. Pursuant to the enforceable undertaking, Austip has committed to spend \$1,094,000 including installing a new waste recycling system that eliminates pedestrian access and reduces mobile plant work in the Recycling Centre. Austip also spent more than \$400,000 on safety rectifications following the incident, including purchasing a front-end loader that provided the operator with superior vision of the surroundings.

## Fine upheld despite limitation period ruling

In July 2025, Edstein Creative Pty Ltd (Edstein) [failed](#) in its application for leave to appeal against a conviction recorded against it in May 2024, unsuccessfully relying on the 2024 limitation period decision *Prime Marble & Granite Pty Ltd v Safework NSW* [2024] NSWCCA 105.

Edstein unsuccessfully argued that the limitation period for a prosecution by SafeWork NSW had expired by the time SafeWork NSW laid charges against it, as SafeWork NSW had an air monitoring report years prior that showed some workers in one area of a factory in Taree were exposed to levels of dust that exceeded the relevant workplace exposure limit. Justice Ball rejected Edstein's submissions and refused leave to appeal against its conviction, finding "At most, the report established those workers working in the monumental section of the factory were working in an environment where the dust samples contained levels of Respirable Crystalline Silica that were above the recommended level. [However] the report also indicated that those employees wore respiratory protection equipment... There was nothing in the report to suggest that that line of defence together with the other measures that were taken were not sufficient to avoid the risk of death or serious injury or disease."

The limitation period argument was also rejected in another recent decision, [SafeWork NSW v Deemah Stone Pty Ltd](#) [2025] NSWDC 248.

## Improvement notice set aside

The NSW Industrial Relations Commission has [set aside](#) an improvement notice requiring Catholic Healthcare Ltd (CHL) to ensure the workers at its 39 sites were fit tested for respirators, which was argued to be set to cost CHL between \$1.2 to \$2.6 million each year to comply with.

Commissioner McDonald held that prior to issuing the Improvement Notice, the inspector did not engage in the task of considering whether fit testing was reasonably practicable for CHL, including that he did not "consider the ways in which [CHL] was eliminating or minimising the risk of infection from airborne diseases (beyond confirming that they were using respirators)" and did not consider "the cost of implementing fit testing relative to the risk posed at that time from airborne diseases."

Commissioner McDonald also found that one of the duties the inspector said he believed was being breached (reg 44 of the *Work Health and Safety Regulation 2017*) only applied to "hazards specifically identified in the Regulations" and did not apply to CHL, however his Honour concluded that the regulations are "not straight forward" and "it was reasonable for the Inspector to *believe* that reg 44 applied to CHL."



## Queensland

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### Fatal Queensland mine conviction overturned

A mining company has successfully appealed against its conviction under the *Coal Mining Safety and Health Act 1999* (CMSH Act), with the Industrial Court finding that the primary judge failed to examine all of the evidence relevant to deciding whether the cause of the company's breach was beyond its control.

In February 2019, a grader's defective parking brake failed and the machine rolled backward down into a mine. One of the workers in the mine sustained fatal injuries. The Brisbane Industrial Magistrates Court convicted the company of contravening its safety and health obligations to ensure the risk to coal mine workers at the mine was at an acceptable level.

On appeal, President Davis J found that the trial had been conducted on a false premise – namely that the issue was the “appropriateness” of the testing of the parking brake, whereas the real issue was whether the commission of the offence was due to causes over which the company had no control, for the purpose of the “control” defence under section 48 of the CMSH Act. The Industrial Court set aside the company's conviction and ordered the parties to make submissions on whether any further orders ought to be made.

### Appeal against safety conviction dismissed

The Queensland District Court has **dismissed** appeals by Scocan Holdings Pty Ltd and its directors against findings of the Maryborough Magistrates Court that Scocan and its directors were each guilty of offences against the QLD WHS Act. Scocan and the directors argued that the Magistrates Court erred by treating the due diligence duty imposed on the directors as being the same as the PCBU duty imposed on Scocan.

In dismissing the appeals, Queensland District Court Judge Anthony Rafter acknowledged the Magistrate referred to the PCBU and the directors collectively, but explained “that was because they were all charged with offences arising out of the same set of circumstances”. His Honour noted that the Magistrates Court specifically referred to section 27 of the WHS Act (the directors' due diligence duty), and did not treat the obligation it imposed on the directors as “creating any form of vicarious liability”. The Judge said he was satisfied beyond reasonable doubt from the facts of the case that Scocan's safety breaches and the directors' due diligence failures were proven, and dismissed the appeals.

### Vessel master fined after leaving 11 divers alone in the ocean

A vessel master has been **fined** \$10,000 and \$1,600 in costs after pleading guilty to a category 2 breach of his duty as a worker under the *Safety in Recreational Water Activities Act 2011*. The charges related to an incident in January 2022 where the vessel master left 11 recreational divers in the ocean alone whilst he delivered an unwell diver back to shore. The divers were left unattended in the water for a period of about 30 minutes. The Magistrate found that the vessel master should have recalled all of the divers back to the boat, and counted the divers before returning to shore with the unwell diver. The Magistrate found that the vessel master was in a difficult situation, however exposed the stranded divers to serious risks.

## South Australia

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### Failure to pay reparations taken into account in WHS penalty

Greyhound Racing SA Limited (GRSL) has been [fined](#) \$255,000 after a greyhound handler was severely injured after being struck by a mechanical lure travelling at 70km/h during a trial greyhound race. GRSL pleaded guilty to a Category 2 offence against the Work Health and Safety Act 2012 (SA) (SA WHS Act), and submitted that the full available reduction of 40 per cent of penalty should be granted based on its early guilty plea, conduct, and contrition.

His Honour Deputy President Lieschke instead found that “a reduction of 15 per cent is all that can be justified”, in light of GRSL’s decision to not pay any reparations or compensation to a victim “who remains entirely uncompensated more than two and a half years after the offence”. His Honour noted “The defendant’s decision to act according to its own financial self-interests is a lawful course of action, but it is not consistent with full contrition and full acceptance of responsibility.” Deputy President Lieschke ordered GRSL to pay a \$255,000 fine, plus costs, and pay the injured handler \$40,000 in compensation.

## Victoria

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### Workplace manslaughter fine increased to \$3 million

The Court of Appeal has [increased](#) Victoria’s first workplace manslaughter fine from \$1.3 million to \$3 million, finding that the grossly negligent conduct of LH Holding Management Pty Ltd (LH Holdings) that led to the death of a worker fell within a more serious category of offending even though it only lasted for a matter of seconds.

LH Holdings was initially fined \$1.3 million and its sole director Laith Hanna was sentenced to a community corrections order of 2 years and an order to complete 200 hours of unpaid community work. The sentence was appealed by the Director of Public Prosecutions on the grounds that the sentences were manifestly inadequate in light of the seriousness of the offence.

On appeal, the Court re-sentenced the company to a fine of \$3 million to reflect the seriousness of the offence and the

need for general deterrence. The greater fine was imposed despite recognition from the Court that LH Holdings would be unable to pay the fine. However, the Court dismissed the appeal against Mr Hanna’s sentence, taking into consideration Mr Hanna’s financial circumstances and noting that, as a sole director, “Mr Hanna is, for all practical purposes, the company” and therefore there is “little point imposing a fine on him” as “any fine imposed on LH Holding will also have an impact upon [Mr Hanna] personally”.

### PCBU convicted following sexual harassment

Oz 22 Painting Pty Ltd has been [found guilty and fined \\$90,000](#) for breaching section 26 (Duties of persons who manage or control workplace) of the Occupational Health and Safety Act 2004 (Vic OHS Act), after a worker was subjected to sexual harassment throughout their employment.

## PCBU fined \$100,000 over absence of behavioural policies

Blisspell Pty Ltd has been **fined \$100,000** after being found guilty of failing to provide or maintain a workplace that was safe and without risks to health, after a worker made a series of allegations of inappropriate behaviour at the workplace. The Court found that it was reasonably practicable for Blisspell Pty Ltd to have reduced the risk of injury by devising a workplace behaviour policy that described unacceptable behaviours, including sexual harassment, and provided a reporting and response process for workers; and implementing the policy by training managers, supervisors and workers.

## PCBU fined for failing to take every reasonably practicable step to prevent fire

An energy company has been fined \$170,000 for an offence against the Vic OHS Act relating to its failure to use a readily available thermal imaging camera to prevent a fire.

Judge Rozen accepted that the company had a number of steps in place to address the risk of fires and to minimise their impact if they broke out, however his Honour found that under the statutory duty the company "was required to take every reasonably practicable step to reduce the risk" and "the use of a thermal imaging camera was, on the evidence before the court, clearly such a step." The fire took more than an hour to contain but no injuries were sustained.

## Appeal based on inconsistent verdicts rejected

Supagas Pty Ltd (Supagas) has **failed** in its application to appeal against its conviction and sentence for offences against the Vic OHS Act relating to its failure to:

- Provide and maintain a safe working environment for employee.
- Failure to ensure that persons other than employees were not exposed to risks to health and safety.

Supagas was acquitted of a separate charge relating to a failure to provide the necessary training and instruction to workers.

The Victorian Court of Appeal rejected all of Supagas's grounds of appeal, including its argument that it could not be guilty of failing to provide a safe work system at the same time as being acquitted of failing to provide the necessary training and instruction on that system. His Honours found "It was well-open to the jury to conclude that Supagas had provided its employees with such information, instruction and training to employees as was necessary to enable them to perform their work in a way that was safe and without risks to health (or, more properly, not be satisfied beyond reasonable doubt that Supagas had failed to do so), yet at the same time be satisfied to the requisite standard that — notwithstanding that it had provided the necessary information, instruction or training — Supagas had failed, so far as was reasonably practicable, to provide and maintain systems of work for its employees that were safe and without risks to health."

## PCBU fined for misleading safety regulator

A carpentry business J & A Referrals Pty Ltd (J & A) has been fined \$12,000 plus \$4,000 in costs after pleading guilty to an offence against section 153 ("Offence to give false or misleading information") of the Vic OHS Act.

The Court heard that four weeks after a fall from height incident, a director of J & A approached the injured labourer and his co-worker, and asked them to sign a document for their induction. The document was then backdated to when the labourers started work on the site and produced to WorkSafe Victoria. The injured labourer told WorkSafe he had not been inducted at all, and his co-worker could not recall completing an induction. By virtue of its plea of guilty, J & A accepted that it gave information in complying or purportedly complying with the Vic OHS Act that it knew to be false or misleading in a material particular, in that J & A had confirmed to WorkSafe that the date on the induction documents were true and correct.

## PCBU's recklessness fine upheld on appeal, director's penalty reduced

The Court of Appeal has [upheld](#) a company's \$2.1 million fine for recklessly endangering an apprentice, but quashed the \$140,000 penalty imposed against the PCBU's director and reduced the director's five-year community correction order, with 600 hours of unpaid community work, to three years and 200 hours of work. The charges against the company and director related to an incident in 2021, where an apprentice was struck by a steel pipe protruding from a lathe and suffered severe permanent injuries.

The Court of Appeal heard the director's \$140,000 fine was one of the highest ever imposed on an individual, while the community correction order was of the maximum duration and number of community hours that could be imposed.

## Company director sentenced for recklessly endangering worker

A company co-director has been [convicted and fined \\$45,000](#) after pleading guilty to the reckless endangerment of a worker who was repeatedly exposed to toxic gas. A court found the director's reckless actions were financially motivated. The company was also convicted and fined \$250,000 for reckless conduct endangering persons at a workplace and \$250,000 for failing to maintain a safe system of work.

## Western Australia

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### First fatality related prosecution under WA WHS Act

WASS Nominees Pty Ltd (WASS) has been [convicted and fined](#) \$875,000 in the first fatality-related prosecution under the WA WHS Act which came into effect in March 2022. WASS pleaded guilty to breaching section 31 of the WA WHS Act, after an experienced machine operator was fatally injured after being caught in the moving parts of a salt pit conveyor while the guarding was not in place.

## Northern Territory

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### Appeal against conviction rejected; worker's non compliance was foreseeable

The NT Supreme Court has [rejected](#) Kalidonis NT Pty Ltd's appeal against its conviction and \$550,000 penalty for breaching the Work Health and Safety (National Uniform Legislation) Act 2011 (NT WHS Act), following an incident where a worker attempted to use an excavator to tow another excavator and the towing chains snapped, recoiled and fatally struck the worker.

Justice Brownhill heard evidence that the worker had made previous unsafe attempts to tow excavators, however the highly dangerous conduct was not reported to management to be dealt with. Her Honour upheld the Local Court's finding that "Kalidonis' knowledge that the deceased had used chain to tow the excavator [on previous occasions] called for the clearest of instructions that this method was dangerous and unacceptable, and all workers should have been warned that there would be severe consequences, including termination, if it occurred again."

## Tasmania

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### Jumping castle operator acquitted

Charges for breaches of the Work Health and Safety Act 2012 (Tas WHS Act) against the natural-person PCBU, who operated the jumping castle involved in the tragic incident at Hillcrest Primary School that killed six children, have been [dismissed](#). The Court found that the PCBU's failure to use eight pegs to anchor the jumping castle was not a substantial or significant cause of the children being exposed to the risk of serious injury or death, and that whilst the PCBU could have done more or taken further steps, given the effects of the unforeseen and unforeseeable dust devil, had she done so, that would have made no difference to the ultimate outcome.

## New Zealand

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### Former CEO sentenced for failure to exercise due diligence

The former CEO of Ports of Auckland Limited (POAL) has been sentenced in the District Court at Auckland, following the landmark decision where he was found guilty of an offence under the Health and Safety at Work Act 2015 (NZ) (HSWA) for failing to comply with his officer due diligence duties and by that failure, exposed stevedores to a risk of death or serious injury. That risk eventuated on 30 August 2020, when Pala'amo Kalati was crushed and killed by a container falling from an operating crane.

The Court's decision to convict Mr Gibson can be accessed here: [Maritime New Zealand v Anthony Michael Gibson \[2024\] NZDC 27975](#) and is discussed in the previous edition of our WHS Briefing.

#### Sentence imposed

Mr Gibson was fined \$130,000 (from a maximum penalty of \$300,000) and ordered to pay \$60,000 towards the costs of the prosecution.

#### Reasons for decision

In sentencing Mr Gibson, Judge Bonnar KC referred to the below facts and reasons for his verdicts:

- Mr Gibson was fully aware of the critical risk of handling suspended loads.
- Mr Gibson was ultimately responsible for health and safety and was tasked with a number of key health and safety responsibilities. He was responsible for monitoring and reviewing the performance of his subordinates and POAL's systems generally and, in that respect, he was required to exercise systems leadership.
- Mr Gibson was, in many practical ways, a hands-on CEO in relation to health and safety issues at the port.
- Mr Gibson was aware of the lack of timely response by POAL to recommended improvements to health and safety accountability, monitoring and reporting, including the reporting of incidents, near misses and non-compliance. He was aware, or ought to have been aware, of the lack of timely progression of bow-tie analysis of critical risks. He was on notice of POAL's

ongoing difficulties in adequately monitoring work as done at the port and, in particular, of the need for improvement of the monitoring of the night shift.

- Mr Gibson was conscious of the desirability of additional technological controls in relation to work carried out by lashers on ships, to address POAL's reliance on behavioural controls, but he failed to turn his mind to the need for additional hard, non-technological, controls.

Judge Bonnar KC concluded that a reasonable CEO would have recognised the shortfalls in POAL's management of exclusion zones around cranes working over ships and would have ensured POAL utilised appropriate resources and processes to address those shortfalls. His Honour also concluded that Mr Gibson had the capacity and ability to influence the conduct of POAL in relation to its failures. Accordingly, his Honour was satisfied beyond reasonable doubt that Mr Gibson failed to exercise the care, diligence and skill that a reasonable officer would have exercised in the same circumstances.

#### Factors taken into account in sentencing

In sentencing Mr Gibson, Judge Bonnar KC took into account the following:

- An emotional harm reparation order in the sum of \$20,000 had already been made in favour of Mr Kalati's workmate as part of the sentencing of POAL in December 2023. POAL had also entered into private reparation arrangements with Mr Kalati's family which were "extensive and substantial". Accordingly, his Honour concluded that it was not necessary or appropriate for the Court to make any further orders for reparation in this case.
- The fact that other officers shared the same or similar duties as Mr Gibson was not relevant to the assessment of causation and culpability. The fact that a duty is shared does not diminish the duty.
- Mr Gibson's breach of his due diligence duty made it materially more likely that POAL would breach its duty of care in a manner giving rise to the risk of death or serious harm. While Mr Gibson's breach was not an immediately operative cause of the risk and realised

harm, as CEO he had the power, capability and responsibility to do all that he could to reduce the risk. That is particularly so where POAL's business involved inherently dangerous activities.

- There was significant international guidance into the management of the critical risk of handling suspended loads and crane operations, as well as port operations and stevedoring generally.
- The risks associated with crane operations and suspended loads are well-recognised and well-documented. The risks and the need for effective control and management of those risks are obvious.
- Stevedoring is an inherently dangerous business, with the second worst rate of injuries by comparison to other industries in New Zealand and a high rate of fatalities in New Zealand by international standards. Regulators had been drawing this to the attention of senior port company staff from as early as 2010.
- During Mr Gibson's tenure as CEO, POAL received four convictions which all reflected, to varying degrees, a failure on the part of POAL to adequately monitor health and safety systems or policies and to supervise works.
- Mr Gibson was on notice, from at least 2018, following the death of a nightshift straddle driver who was violating POAL's health and safety policies, that POAL had demonstrated ongoing difficulties in adequately monitoring work as done.
- Mr Gibson was fully aware of the critical risk of handling suspended loads and had personally turned his mind to the need for additional hard controls, from at least 2016.
- Additional hard, non-technological controls were available to POAL to manage the risk, including the

placement of physical barriers or signage. Those controls were put in place within a very short space of time following Mr Kalati's death. Mr Gibson was conscious of the need for additional technological controls but personally failed to turn his mind to the need for any other form of hard control.

Judge Bonnar KC concluded that Mr Gibson's offending in relation to his due diligence duty fell in the bottom half of the high culpability band and adopted a fine of \$140,000 as the starting point for sentence. His Honour then applied a discount of \$10,000 from the starting point, reflecting the argument made by Counsel for Mr Gibson that a defendant's "fall from grace" is itself a form of punishment.

#### Volcanic island owner conviction overturned

The New Zealand High Court has [overturned](#) the conviction and \$6 million safety penalty imposed on Whakaari Management Ltd (WML), the owner of the Whakaari volcanic island which erupted in December 2019 and killed 22 people. The Court found that to have a duty under section 37 of the HSAW Act ("Duty of PCBU who manages or controls workplace"), WML "had to have 'managed' or 'controlled' something other than simply granting access to the walking tour operators, given granting access is merely an incident of ownership which the legislative history shows Parliament sought to exclude".

The duty under section 37 of the HSAW Act largely mirrors section 20 of the model WHS Act, however its wording was amended before passing the New Zealand Parliament so that it excluded PCBUs that do "not have active control" of a workplace, such as an area of a farm workplace that members of the public were permitted to access, to engage in recreational activities like cycling or walking.

## United Kingdom

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### Prosecution of NHS Trust and Trust Manager

It has been reported that an NHS Trust and manager were found not guilty of corporate manslaughter, but were found guilty of health and safety law offences in relation to a mentally ill patient taking their own life while in the care of the NHS Trust.

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