

GOVERNMENT DEPARTMENT PROSECUTED

6 December 2016. Chief District Court Judge Jan Marie Doogue has entered a conviction against the Ministry of Social Development on a charge of failing to take all practicable steps to ensure the safety of its employees. Judge Doogue declined an MSD application for discharge without conviction. The charge was brought by WorkSafe which investigated MSD's safety systems following the shootings at the WINZ office in Ashburton.

In her judgment she said that 'deterrence, denunciation and accountability' are the most important principles to consider in health and safety cases. She noted that had she been able to fine MSD (see ** below), she would have set the fine at \$16,000

Judge Doogue noted that "the defendant's systems were weaker than those of other service-oriented government agencies with a similar client base, but were not a major departure from industry standards."

"This prosecution has clarified for all workers and employers that there are steps that need to be taken to protect staff dealing with the public," WorkSafe's Chief Inspector Investigations Keith Stewart said.

"Employers need to assess the level of risk their staff face and what steps would be appropriate for them and their workplace to manage that risk. In some cases using methods to restrict physical access to staff may be a prudent decision after analysing the risk, but this is not a blanket requirement that WorkSafe would expect.

"We expect that companies and government agencies who deal directly with the public assess the risks of violence or threats of violence, identify controls, implement them and monitor their effectiveness, and if necessary revise to improve the controls. They should seek appropriate professional advice, if needed, to ensure this is a robust process," Mr Stewart said.

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"MINIMUM ENVIRONMENTAL IMPACT" – PIKE RIVER TRIBUTE

The recent screening of a documentary on Pike River brought back many memories that were extremely disturbing in recent years. The mining of Pike River was a tragedy that had so many stupid mistakes that it was 1000% guaranteed to happen.

The main cause of the accident was because human beings were valued at the same level or similar to environmental values. In plain language people are no more important than birds, bees and trees. Many of our NZ people have turned our value system upside down and we need to take stock of our values and make sure that we do not commit the same stupid mistakes again.

The mine was constructed with assurances to NZ Government ministries that there would be "minimum environmental impact". The final cost is believed to be \$58 million when the original estimate was a fraction of that. Tunnels were many kilometres with 2 kms to the final exit or portal. The mine should never have been underground. An opencast mine would have been 100 times safer and the native bush would have regrown within 40 years.

We completed an analytical report which covered 23 matters of significance. The report was peer reviewed by Bob Lake MBA international risk manager from USA. The NZ Government appointed a Royal Commission and it found or focused on 8 matters. The whole project consisted of a series of dangerous compromises.

1. Any underground mine of this nature was likely to have huge emissions of explosive gases on a regular basis and if there was an inadequate warning system with no automatic shutdown –bad luck!
2. Ignition is required for the gas to explode. There were three likely sources. Cigarette lighters or similar, sparks from tools or machinery, sparks from the boring machine used to extract the coal. The design was that there would be no shoring inside the mine and the coal would be ground out - right up to the solid rock creating millions of sparks.
3. The ventilation system would have been better for a primitive much smaller facility. It was inadequate with zero provision for dual supply or backup.
4. The rescue system was so unwise that it would have been better to get people from Wellington or Christchurch. The rescue was mounted by the NZ Police based in Nelson and this was a 3 hour drive. Rescue was only viable for the first two hours immediately after the explosion so the emergency scheme was guaranteed to fail.
5. Only one entry and therefore one exit – incredibly dangerous.
6. Extremely inadequate emergency facilities underground.
7. Recent Governments laid off all Mines Inspectors.

Daniel Rockhouse was the only miner who probably remembered the words of his father and decided to crawl out of the main blast near the ground and then headed for the fresh air still being pumped into the main portal.

SERVICE AGENTS, INDEPENDENT WORKERS TO TAKE NOTE.

The HSAW Act applies to all business activities and real estate agencies are no exception. Since agents are in control of the property when viewings and open homes are conducted they are considered 'Persons in Charge of a Business or Undertaking' (PCBU) and owe duties under the Act. For a property viewing an agent's primary responsibility is to ensure the viewing is conducted safely and all foreseeable hazards to people viewing the property are minimised. The Act requires an agent to take all reasonably practicable steps to mitigate or minimise risks to health and safety.

What does reasonably practicable mean?

For the purposes of managing risk, reasonably practicable is a balance between what is possible (the highest level of protection) and what is achievable (reasonable in the circumstances). Agents should therefore consider what is reasonably able to be done in relation to ensuring the health and safety of themselves and others, taking into account and weighing up all factors including:

- the likelihood of the hazard or risk concerned occurring;
- the degree of harm that might result from the hazard or risk;
- what the agent knows, or should reasonably know, about the hazard or risk;
- ways of eliminating or minimising that risk; and
- the availability and suitability of ways to eliminate risk.

It is crucial to complete the assessment of risk for each property. Only after assessing the extent of the risk, and the available ways of eliminating or minimising the risk, can an agent properly discharge their duty. The next step is to then put in place measures to prevent or minimise those health and safety risks identified.

What do reasonably practicable steps look like?

An agent's responsibility under the Act is limited to what they can actually influence and control. Therefore, practicable steps will not require an agent to fix the damage to a loose or broken decking board, however reasonably practicable steps could include:

- suggesting the owner fixes the decking board prior to the viewing;
- blocking access to the area during the viewing; or
- notifying people at the viewing of the risk with a hazard sign.

Which actions (or combined actions) are reasonably practicable will depend on the likelihood and degree of harm factors mentioned above. Reasonably practicable steps will always be determined by the property and the particular risks associated with that property. As a general rule, the first step should always be completing a health and safety assessment with the owner and documenting this assessment. A standard form assessment included with the listing agreement is a good way to manage this process and standard forms are available from industry bodies such as REINZ. A follow up onsite assessment should be conducted.



STATISTICS NZ REPORTS ON ACC INJURY CLAIMS.

STATISTICS NZ HAS RELEASED A REPORT INTO WORKPLACE INJURY CLAIMS.

The overall rate of work-related injury claims in New Zealand in 2015 was 110 claims made for every 1000 full time employees.

This amounted to 230,200 claims made to the Accident Compensation Corporation. Thirty one thousand of these were for serious injuries.

Cleaners, rubbish collectors, couriers and labourers were among a category of workers making 238 claims per 1000 employees in 2015. This was the highest rate of claims among any category of workers.

Agriculture, forestry and fishery workers had the second highest rate of claims, after falling from 242 claims for every 1000 workers in 2014 to 233 per 1000 in 2015.

The fishing, transport, postal and warehouse industries had the highest numbers of serious injuries, accounting for 21 per cent of all claims made by these occupations.

Males accounted for 92 per cent of all fatal work-related injury claims.

Workers aged 15 to 24 years and workers aged 65 years and over had the highest claim rates across all age groups.

The total number of claims has been steadily decreasing since 2005, but increasing slightly each year since 2012.

CORRECTIONS DEPT SUBJECT TO CORRECTIONS 7 December 2016

The importance of good risk assessment and monitoring of offenders carrying out community work has been highlighted in today's sentencing of the Corrections Department under the Health and Safety in Employment Act (previous Act).

The department was charged under S15 of the Act (failing to take all practicable steps to ensure no action or inaction of any employee while at work harms any other person) after the victim was crushed on 7 June 2014 by part of a tree that had been previously felled.

In this case, Corrections did not carry out risk assessments when placing offenders with a community organisation, instead they believed the community organisation was set up and resourced to carry out risk assessments and to undertake the associated management actions on Corrections' behalf.

"There are **three key learnings from this tragic case**," WorkSafe's Chief Inspector, Keith Stewart, said today.

1. "Corrections needs to ensure there is an assessment of the risks to offenders undertaking community work particularly in relation to hazardous work, and appropriate safety precautions put in place.
2. Second, Corrections needs to ensure effective monitoring of offenders working with organisations on community work.
3. Finally, Corrections has a responsibility to ensure that when work is completed through another party, that everyone knows and understands what is required of them and what work can and should not be undertaken.

"Since the tragedy, Corrections has taken steps to improve their processes and we will continue to work with them to ensure offenders are as safe as possible when doing community work," said Mr Stewart. Corrections was ordered to pay reparations of \$155,000 for emotional harm to the victim's family, and a further \$17,471.12 to the victim's father for financial losses. There is a reserved judgement on reparation for one other party. The Judge stated that if a fine had been possible it would have been another \$84,000.