

PRIVATE PROSECUTIONS – REPORT FROM WORKSAFE NZ

The Health and Safety at Work Act (2015) (the Act) specifically provides that in certain circumstances private prosecutions may be initiated (S 144) when the regulator cannot or chooses not to prosecute a work health and safety event. This position sets out WorkSafe New Zealand's view on private prosecutions and what you can expect if you need information held by WorkSafe to enable a private prosecution.

What is WorkSafe's view on private prosecutions? We value private prosecutions as an important tool in the work health and safety system. They provide an opportunity for victims, their families or other parties to take a prosecution when WorkSafe does not. WorkSafe targets its limited resources to where we think they will make the most difference to the work health and safety system. We will not always investigate work health and safety events. When we have investigated an event, we may still decide not to prosecute (even when there is sufficient evidence) because of factors we consider.

Anyone can bring a private prosecution – you do not have to be a victim or a victim's family member. Under the Act you are entitled to bring a private prosecution in relation to an offence if: – neither WorkSafe nor any regulatory agency has taken or intends to take any action, and – a person has received notification of this from WorkSafe.

If you would like to receive a notification, you must first inform WorkSafe of your interest in knowing of any action taken over the particular incident. We do not advise any external party, such as the Person Conducting the Business or Undertaking (PCBU), that you have expressed interest. You can also bring a private prosecution with leave of the Court.



Summit Manager Name _____

Telephone/Email _____

All information in this newsletter is to the best of our knowledge true and accurate. No liability is assumed by the author, or publisher, for any losses suffered by any person relying directly or indirectly upon this newsletter. Call our Head Office 09 438 7555.

13 There hath no temptation taken you but such as is common to man: but God is faithful, who will not suffer you to be tempted above that ye are able; but will with the temptation also make a way to escape, that ye may be able to bear it. ! Cor 10:13

NZ HEAD OFFICE ADDRESS, 77 Tarewa Road, Morningside, Whangarei NZ0110
TEL 09 438 7555/7550/7554, MOB 021 070 9141 CEO gpcarson40@yahoo.com
EMAIL safetynz@xtra.co.nz web www.summitsystems.co.nz Skype Andrews_herb
ARCHIVED NEWS Go to Summit Systems Ltd website, then click on newsletters



News, Views, Solutions
from Summit Systems
January 2022

**SERVICE AGREEMENT FORMS AVAILABLE FROM SUMMIT**

We Would like to take this opportunity to remind all clients that we have a form available to help all diligent sites to focus on the things that they might forget and leave out by mistake from time to time.

The form has more than 20 items that are set out in order of importance from what we consider to be the things that matter and the first few are as follows:

- a) Provision of safety meeting formats with draft minutes / reports
- b) Observances of annual calendar with review at every visit
- c) Tutorial for members of safety committee i.e. 40 pages to read and study.
- d) Provision of recent newsletters from Summit Systems every visit.
- e) Assistance with the convening of safety meetings – every visit agreed.
- f) Copy of HSAW Act and Regulations with staff tutorial on CD Rom.
- g) Self audit for new laws – proof of performance / compliance checks.
- h) Assistance with HR issues presented to Consultant or Head Office.
- i) Site audit of premises by Consultant periodically or every visit.
- j) Safety Observer training course for all staff on hazardous work.
- k) Injury Prevention training course for all staff 1-2 hours.
- l) Training needs analysis all staff annually by Client and Consultant.
- m) Assistance with Job Task Analysis reviews all staff by Consultant.
- n) Assistance with accident investigation and reporting – Head Office.
- o) Fire Safety drill and training in procedures annually or bi annually.
- p) Safety Star Rating performance indicators – Assessor or Verifier.
- q) ACC discount indicators to aim for – basic forms from Head Office.
- r) ACC experience rating bonus review – contact Head Office.
- s) Company Doctor forms and implementation – get doctors to agree.
- t) Assist with disputes relating to ACC rulings – prepare briefs for lawyers.
- u) Application to Insurance Company for preferred supplier status rates.
- v) Complete Emergency Plan for Hazardous Goods or Chemicals.
- w) Drafting of work instructions for complex jobs or machinery (contact SSL)
- x) Safety Officer course every two years most important for ACC bonus.
- y) Make sure sections 28-31 of the Act are not infringed as it regularly is.
- z) Keep lookout for new regulations and updates of important HSE policies.

We urge you to follow/use our forms and get 60% back from ACC. This means full 50% of Experience Rating Bonus plus another 10% for discount.

2.

VERO LIABILITY INSURANCE REPORT - WORKSAFE PROSECUTIONS

Government announces a limited independent review following the White Island tragedy. The Minister of Workplace Relations and Safety has **announced** a limited independent review into the way in which WorkSafe performed its regulatory functions in relation to Whakaari/White Island.

The **review** will assess the adequacy and appropriateness of WorkSafe's actions in relation to Whakaari/White Island and whether further steps should have been taken. It will also identify whether any changes to WorkSafe's systems, processes and practices are necessary or desirable. David Laurenson QC has been appointed to undertake the review and the Minister expects to receive it in May.

The review falls well short of a public inquiry. It will not call for submissions from organisations and the public. The **Terms of Reference** limit interviews to relevant WorkSafe staff, the CTU, Business New Zealand and two industry associations.

The review follows on from a limited **targeted review** of the adventure activities regime and how it operates when activities take place in naturally-hazardous environments. This was undertaken by the Ministry of Business Innovation and Employment which has responsibility for overall health and safety policy, regulation and strategy. The targeted review identified a number of improvements including strengthening the regulatory leadership role of WorkSafe, increasing the safety audit standard's focus on natural hazards and improving the adventure activities certification scheme.



3.

SLIDE SHOWS FOR CONTRACTORS AVAILABLE

About 15 years ago we were invited by the NZ Contractors Federation to provide a training course for all workers and it was to be called Operate Safe. We quickly developed a course from our high quality training resources which included USA.

We were told that our course was by far the best but it did not have a bitumen warning notice and we must have one of those. We then inserted a bitumen warning notice.

Then we were told something else was missing. It did not have a test to give to the workers so we developed a high quality test.

We went through another game or two of ping pong and then we were told that the course we developed was very good indeed but we were not to be awarded as it was designated for another provider called something safe.

We later learned that the Consultant who supposedly was independent was able to go to Europe for 3 months on a trip and we assumed that this was the reward for him. Please contact our office for a copy of the course and it is 200 slides. Plus test. It is still top quality and we are still the best in the market. We may need to learn tricks.

It reminded us of the occasion when we had a Labour Minister of Government visit with us in Christchurch to find out about our courses for Safety Officer. She then returned to Wellington and went to her friends in ACC and obtained an annual \$2 million allocation for ERE funding but it was only for about 12 successful applicants from the Trade Union movement and we did not really qualify. We made annual applications to the ERE fund every year for about seven years but no luck at all.

CAR HAULWAYS FINED \$279,000 DRIVER VICTIM FELL AND LATER DIED

Facts in brief: CHL used operators, including the victim, to drive its car transporter trailers. **The victim was the only contractor, and operated through his own company. NB: You cannot escape by making workers into contractors.**

One day when strapping cars to the top deck of his trailer, he fell and died. The WorkSafe investigation identified failures by CHL in its maintenance and training around edge protection, specifically the wire ropes on its trailers, and related failures to co-ordinate health and safety systems with the victim's company.

Offence section: Section 36 and 48 of the Health and Safety at Work Act 2015

