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### **MORE COURT DECISIONS FOR THOSE STILL DISPUTING**

We know that there are plenty of Australians that will fight against the fines regime and the Garibaldi Bros both went to prison for five years.

Much the same attitude can and does prevail in New Zealand. We are not well informed of what happens in other regions but we can tell you that here in Northland we have two major industries that have both had 29 fines and we know of another large building company plus a manufacturer that have had five fines and are still adamant that the officials have it all wrong.

We also believe that we have many hundreds that trust in their good luck and hope to escape the worst of fines as it never was their fault and never will be. In addition we have hundreds of businesses that are laying off staff at present and are simply going back to sole trading with casual helpers from independent contractors or equivalent.

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I am poured out like water, and all my bones are out of joint: my heart is like wax; it is melted in the midst of my bowels. <sup>15</sup> My strength is dried up like a potsherd; and my tongue cleaveth to my jaws; and thou hast brought me into the dust of death. <sup>16</sup> For dogs have compassed me: the assembly of the wicked have inclosed me: they pierced my hands and my feet. *Psa 22*

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## News Views Solutions from Summit Systems #188 May 2023



### **MAJOR HAPPENING IN COURT PROSECUTIONS - REDUCTIONS**

.We have been studying the trends in recent prosecutions. There has been an alarming event that most people would not have noticed. It appears that the majority of significant cases that would otherwise end up with fines of \$400,000 approx asre being transmuted or mitigated by the Judge back to an amount that can be afforded by the business even if payment is made over 5 years.

The maximum fine is often recounted and this is normally \$1.5 million. Then the starting point is stated as the intended fine and then a discount is stated to make allowances for economic inability to pay. Then we arrive at mitigation plus reparations and court costs. The reparations are often paid for by the insurance company of the guilty party. Here is a clear example.

Waratah Forestry Services Limited 14 DECEMBER 2022

Fine imposed: The starting point was set at \$530,000. Following discounts of 50%, the fine was reduced to \$265,000 after mitigation. **FORESTRY**

Dan's Renovations Limited 24 NOVEMBER 2022

Fine imposed: Starting point of \$620,000 reduced nominally to \$341,000 following mitigation **BUILDING AND CONSTRUCTION**

Primero Profiles Ltd 11 OCTOBER 2022

Fine imposed: Starting point of \$360,000, reduced to \$180,000 following mitigation **MANUFACTURING**

Wealleans Bay of Plenty Limited 7 SEPTEMBER 2022

Fine imposed: The starting point was assessed at \$450,000, reduced to \$360,000 following discounts. **AGRICULTURE**

Newey Machinery Limited 19 DECEMBER 2022

Fine imposed: Starting point \$400,000 reduced to \$0 due to establishing financial incapacity. **MANUFACTURING**

Westown Agriculture Limited & Westown Haulage Limited 8 NOVEMBER 2022

Fine imposed: Starting point of \$450,000, reduced to \$270,000 following mitigation **AGRICULTURE**

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## **MORE COURT DECISIONS FOR THOSE STILL DOUBTING**

### **UBP Limited** 7 SEPTEMBER 2022

Fine imposed: Starting point of \$427,500, reduced to \$256,500 following discounts. **AGRICULTURE**

### **JTK Trustee Limited Mammoth slide** 29 AUGUST 2022

Fine imposed: His Honour reduced the fine at the final stage of sentencing to an end fine of \$350,000. **ARTS AND RECREATION**

### **RS Construction Limited** 25 OCTOBER 2022

Fine imposed: \$65,000 **BUILDING AND CONSTRUCTION**

### **Kakariki Proteins Limited** 14 NOVEMBER 2022

Fine imposed: \$350,000 **MANUFACTURING**

### **Icepak New Zealand Limited** 26 JANUARY 2023

Fine imposed: In respect of the section 36 charge, the starting point for the fine was set at \$300,000, being the low end of the medium culpability band. Final fine was set at \$165,000, following discounts of 45% for reparation, remorse.

## **PERFORMANCE MANAGEMENT CAN BE A SOLUTION**

We are pleased to advise that quite a few clients have implemented performance management to get the best from their workers and avoid costly fines and damage to plant and vehicles.

Most of the schemes are on a 4 month cycle and the workers are able to get \$20 per month each for zero accidents, and in addition \$10 per month for zero drugs and \$5 for zero damage to plant and vehicles. 4 x \$135 would be the total reward - the total reward will be totally lost if they have a failure of one of the 3.

## **HOW TO AVOID PERSONAL GRIEVANCES**

We have a strong competitor that is called Employer for sure and charges their clients thousands of dollars per annum for control of personal grievances. We would like to tell you that we do not intend to go down this ruthless track and to take huge fees from clients that cannot afford to be treated in this manner.

Our approach is to tell you how to make it impossible for workers to make effective claims against you and to do this in three ways at the same time so that it is guaranteed to work. If you are with Employer sure then you can save several thousand wasted dollars per annum.

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## **WORKSAFE NZ ON PRIVATE PROSECUTIONS**

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.

**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 other factors we have to consider.

### **Who can bring a private prosecution?**

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.

### **What can I expect from WorkSafe if I bring a private prosecution?**

WorkSafe will meet its obligations under the Victims' Rights Act 2002 while carrying out its investigation. During a private prosecution process WorkSafe must be fair and impartial to all parties involved in the incident because it is a Crown Entity.



