

# The Safe Side



Developments in health and safety from New Zealand and around the world

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Page 1 of 2

*This month, we look at the latest enforceable undertaking accepted by WorkSafe after a Kura endangered the safety of a group of students who went on a river float activity down the Waikato River using pool toys and noodles. We also have an article about a 2019 crash between a van and an off-road logging truck on a private forestry road that killed four workers and the Coroner's unusual decision to refer the case back to WorkSafe to investigate under the Health and Safety at Work Act. In addition, we cover a massive AU\$1.43 million fine imposed on a company and its director for failing to manage workplace fatigue after a delivery worker died in a road crash. Finally, and following the severe October gales, we briefly touch on guidance for the construction industry on preparing for the hazards of high winds.*

## Enforceable undertaking accepted from Kura after high-risk river activity

On 7 December 2023, Te Kura Kaupapa Māori o Puau te Moananui-ā-Kiwa Board (the Kura) took around a dozen tamariki on a river float activity on the Waikato River in Taupō. They were accompanied by one teacher and one teaching assistant and were using pool floatie toys and pool noodles to float down the river. Most of those taking part were not wearing life jackets. The group encountered strong currents and needed to be rescued.

A WorkSafe investigation found the Kura Board had inadequate policies, planning, supervision and emergency procedures in place for the activity, and should not have let it go ahead. There was a clear potential for death or serious injury.

WorkSafe has now accepted an [enforceable undertaking](#) (EU) from the Kura – the third EU accepted [this year](#). An EU is an agreement between [WorkSafe and a duty holder](#) made under the Health and Safety at Work Act 2015 (HSWA). It is entered into voluntarily by the duty holder following a breach (including an alleged breach) of HSWA and, once in place, is legally binding. It is generally used as an alternative to prosecution.

The EU involves the Kura partnering with Education Outdoors NZ to develop a bilingual Te Ao Māori EOTC

(Education Outside the Classroom) Safety Management Plan & Toolkit for schools and communities to use across the motu. There will also be engagement with the national body for kura kaupapa, Te Rūnanga Nui o Ngā Kura Kaupapa Māori, and the Ministry of Education to distribute the toolkit.

In addition, the Kura staff and Board members will undergo further professional learning and development, with EOTC training for the principal, and training and support for staff and ākonga in safe water activities. Lastly, the EU includes ongoing support for the victims, including a haerenga (journey) to the Waikato River incident location.

EOTC activities have tragically claimed the lives of several children in recent years, including a 15 year-old at [Abbey Caves](#) in 2023, a 16-year old at [Rotoma](#) in 2020 and a Year 13 student at [Waihi Beach](#) in 2021. Guidance for schools and kura can be found on the Education Outdoors NZ [website](#). Education Outdoors NZ recommends that the person responsible for EOTC in each school is registered on the [EOTC coordinators network](#) and participates in ongoing professional development.

## Safety at worksites during high winds



"You're right, it really is windy."

Recent severe weather has seen destructive winds in many parts of the country. These types of events are likely to become more frequent because of warming seas and climate change. [Research](#) from Otago University has

found that weather-related factors played a part in 17% of work-related fatalities between 2005 and 2014.

Severe weather can be a workplace hazard, including in construction where high winds may pick up unsecured materials and cause unstable structures to collapse, crush or strike workers and members of the public. In December 2022, an unforeseeable tornado hit the Hobsonville area and resulted in the deaths of three construction workers on the Hobsonville Point Primary Schools construction site after pre-cast concrete panels were blown over.

[WorkSafe Victoria](#) recommends planning ahead and developing a site strategy for managing severe weather so that tools, materials and debris don't become flying hazards. Sites should be secured, temporary structures, fencing, and scaffolding reinforced, and outdoor or high-risk work rescheduled until conditions ease.

## Coroner takes rare step of referring 2019 forestry road deaths back to WorkSafe to investigate

In the early hours of 29 July 2019, five forestry workers were in a van travelling to work on a private forestry road in the central North Island's Kaingaroa Forest. The sun wasn't yet up and it was dark on the unlit road.

As the van rounded a blind corner, the driver was met by a truck's headlights. He dipped his headlights appropriately. But unbeknown to him, an off-road 35-metre forestry truck with two trailers was turning onto the road from a side road. The truck's rear trailer was blocking the van's lane because of the length of the vehicle. In the absence of side lighting or reflective strips on the side of the trailers, the driver had no way of seeing the trailers in the dark. The van crashed into the truck's rear trailer, killing four of the five men on board and seriously injuring the fifth.

The Police Serious Crash Unit's subsequent investigation found that the driver did not see or react to the trailer because of cannabis use and no further action was taken. WorkSafe never fully investigated the deaths under HSWA and closed the file.

In an unusual development, however, a recent Coroner's report has re-examined the circumstances of the deaths and criticised the actions of both agencies saying the Police at the time did not understand that the truck's operator might have responsibilities to ensure the forestry workers' safety.

The Coroner also referred the men's deaths back to WorkSafe to investigate, and under [section 146](#) of HSWA, provided the regulator with a further six months to file charges. A coroner may do this if they decide that it appears an offence has been committed under HSWA, regardless of when the regulator first became aware of the original incident. In usual circumstances, WorkSafe must file charges within a year.

The Coroner observed that the size and weight of the logging trucks chosen, the planning of distances between side roads and blind corners, and straightforward speed calculations highlighted that turning trucks presented a foreseeable safety issue to anyone having to travel to work in the dark on the arterial forestry road. He found that the decision to operate a truck and trailer unit of this length and slowness, at this location, at night, without any side lighting created the danger that ultimately led to the death of the four forestry workers.

The Coroner also found that the Serious Crash Unit incorrectly recorded that the driver was under the influence of cannabis. Instead, he said, the circumstances pointed to the driver being "entirely sober".

## Australian company and director fined AU\$1.43m after fatigued driver's fatal crash

A fatigued delivery driver's death in a road crash in Victoria, Australia has led to a [massive fine](#) of AU\$1.35 million for the company that employed him, and an AU\$80,000 fine for its director under the State's health and safety laws.

The driver was 12 hours into an overnight shift delivering baked goods when his van drifted into the path of an oncoming truck in August 2022. The 27-year-old died as a result of the collision, while the truck driver was unharmed.

A WorkSafe Victoria investigation found that prior to the incident, the driver had completed the same 796-kilometre delivery run for 17 consecutive nights, mostly including shifts exceeding 12 hours, without adequate breaks of time to rest and recover between shifts. WorkSafe Victoria said that driver fatigue puts workers and the general public at serious risk.

[Fatigue](#) is a state of physical and/or mental exhaustion which reduces a person's ability to perform work safely and effectively. This may lead to errors, and an increase in workplace incidents and injuries. Many industries rely on workers being physically and mentally alert to stay safe and fatigue must be managed as a work risk.

WorkSafe Victoria's guidance on managing fatigue includes:

- setting realistic workloads and eliminating or reducing the need to work extended hours or overtime;
- developing policies and procedures to identify, prevent and manage fatigue and ensuring they are implemented and promoted;
- controlling overtime, shift-swapping and on-call duties.

In New Zealand, [specific legal restrictions](#) apply to how long the driver of a commercial or heavy motor vehicle may work before taking rest breaks.

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