

## Health and Safety Sentencing

### 1992 Act

- Maximum fine: \$250,000 (for strict liability offences)
- High Culpability: \$100,000 to \$175,000 (\$175,000 plus for the highest culpable cases)
- Medium Culpability \$50,000 to \$100,000
- Low Culpability up to \$50,000

### 2015 Act

- Maximum fine: \$1.5m for 'middle band' offence

## Worksafe New Zealand v Budget Plastics (New Zealand) Limited [2017] NZDC 17395

### Key Facts

- decided under the 2015 Act;
- Budget Plastics processed plastic bags and pellet wrap into a re-usable form;
- employee was operating a plastic extrusion machine with an auger component;
- while emptying a bag of plastic scraps into the machine hopper, the bag caught in the auger at the bottom of the hopper, and dragged the employee's hand into the auger; and
- the employee's hand was effectively amputated down to his wrist.

### Failures to ensure safety

The PCBU did not:

- fit the extrusion machine with appropriate guarding/barriers;
- install appropriately located emergency stops;
- have adequate systems for identifying hazards in the workplace;
- have an adequate safe operating procedure for using the extrusion machine;
- have adequate policies/processes in place for training workers in the safe use of the extrusion machine;

Budget Plastics pleaded guilty to one charge of failing to ensure so far as is reasonably practicable the safety of its workers who worked for it, while at work under s 36(1)(a) of the HSW Act.

### Approach to sentencing

- the principles set out in *Department of Labour v Hanham & Philp* remain applicable.
- Worksafe submitted that the following culpability bands were appropriate to incorporate the full quantum of fines (the max is \$1.5m for this charge):
  - Low culpability: up to \$500,000;
  - Medium culpability: Between \$500,000 to \$1m;
  - High culpability: Between \$1m and \$1.5m;
- Worksafe sought a starting point fine of \$900,000;
- Budget submitted that the Court should follow Australian case law guidance, and the appropriate starting point should be \$200,000.

## Reasoning

The District Court held that:

- sentencing in NZ and Australia takes place on different playing fields;
- the Independent Taskforce report resoundingly called for an increase in fines;
- the aim and intent of the HSW Act was to increase fines to improve compliance;
- the approach proposed by Worksafe (using the full range of the fine maximum) may be inappropriate, and result in the proposed starting point being too high;
- the starting point proposed by Worksafe was 9 times higher than what was proposed in another similar case under the 1992 Act;
- Budget Plastics culpability was medium (in keeping with both parties' submissions), which could result in a starting point range of between \$400,000 to \$600,000 under the HSW act and new penalties; and
- after discounts, the end sentence would be between \$210,000 and \$315,000 depending on the starting point adopted.

## Financial Capacity

Budget Plastics provided evidence to suggest that a fine more than \$100,000 would cause financial difficulty for the business. Therefore, the Court reduced the fine from the above range to \$100,000 (the maximum Budget Plastics could afford).

## Costs

Worksafe sought costs of \$3,621.55, half the recorded costs of the prosecution, and \$1,000 costs were ordered.

## District Court Penalty

- Reparation: \$37,500;
- Fine: \$100,000 (reduced from a starting point range of \$400,000 to \$600,000); and
- Costs: \$1,000.

## Worksafe New Zealand v Affco NZ Ltd [2016] NZHC 2832

## Key Facts

- 1992 Act;
- this was an appeal by Worksafe to the High Court on the grounds that the reparation and fine imposed in the District Court were manifestly inadequate;
- an employee night cleaner was employed as a night cleaner at Affco's Rangiruru meat works;
- each night the cleaning gang would do a final check of the mutton floor area and equipment including the moving chain containing hooks and shanks that carried the carcasses;
- the inspection would be done while the chains and hooks were moving;
- the accident happened when the employee was standing on an elevated drip tray to inspect the hooks. As he was doing this a hood passed by coming into contact with his head; and
- this resulted in the employee getting caught on the hook which penetrated his left ear and came out beside his left eye.

## **Practicable Steps**

- Affco defended the prosecution on the basis that it had done all it could to advise employees about its policies and procedures;
- the District Court found that Affco's policies failed to have any actual proscription against standing on a drip tray, and Affco did not have ongoing monitoring and training in place to ensure that its policies (which required the isolation of all equipment before cleaning) were understood and being adhered to

## **District Court Penalty**

- Affco were ordered to pay:
  - Reparation: \$25,000;
  - Fine: \$30,000 (reduced from a starting point of \$40,000 – low culpability);
  - Total: \$55,000.

## **High Court Penalty**

The High Court increased both the reparation (finding that the reparation awarded was inadequate to reflect the serious emotional and physical harm suffered), and the fine (finding that Affco's failures should not have been assessed as falling in the low culpability bracket)

- Affco were ordered to pay:
  - Reparation: 40,000;
  - Fine: \$49,000 (reduced from a starting point of \$60,000 – medium culpability);
  - Total: 89,000.