

ENFORCEABLE UNDERTAKING FOR ZESPRI INTERNATIONAL

WorkSafe New Zealand has accepted an Enforceable Undertaking from Zespri International Limited, following a fatal quad bike incident on a Tauranga orchard in May 2016. Following its investigation into the incident, WorkSafe alleged that Zespri had failed under the Health and Safety at Work Act 2015 to ensure, so far as was reasonably practicable, the health and safety of a worker. Three other parties have also been charged in connection with this incident.

This is the fourth enforceable undertaking accepted by WorkSafe under the Health and Safety at Work Act 2015; a tool that is increasingly being used, in appropriate cases, as a positive alternative to prosecution. This case is one of the first multi-party prosecutions undertaken by WorkSafe. WorkSafe Manager Technical Programmes and Support, Simon Humphries, said the decision to accept the enforceable undertaking was appropriate when considering all the circumstances of this case.

"An enforceable undertaking is not usually an accepted alternative to prosecution where an alleged contravention has resulted in a fatality. In this case, the failures alleged of Zespri were not directly causative of the worker's death." "The activities outlined in the enforceable undertaking will provide long-term sustainable health and safety improvements in the workplace, industry and wider community." "The family of the deceased have been contacted and are satisfied with this outcome".

Under the enforceable undertaking, Zespri International Limited committed to initiatives including:

- Continuing facilitation of grower health and safety education.
- Implementing OHS reviews of contractors who contract directly with Zespri.
- Initiating information campaigns relating to health and safety.
- Sponsoring and promoting the Horticultural Health and Safety Forum.
- Establishing a tertiary scholarship for accredited health and safety studies



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FIRE SERVICE LEVIES INCREASE – WARDENS BECOME IMPORTANT

The Fire and Emergency New Zealand Act 2017 (the Act), which came into force earlier this year, has the potential to have significant financial implications for commercial property owners, and their tenants.

The Act replaces the Fire Services Act 1975 and the Forrest & Rural Fire Act 1975. It has been designed to ensure NZ has a modern, fit for purpose, and well funded fire service that addresses long standing issues such as under funding of rural fire.

The Act established Fire and Emergency New Zealand (FENZ) on 1 July 2017, bringing together around 40 urban and rural fire fighting services to deliver one comprehensive national emergency service. However, under new funding structures proposed in the Act, the commercial property sector looks set to contribute more than its share of FENZ's funding requirements.

The warm up: A 40% hike in Fire Levies

FENZ will be funded almost entirely by a levy on insurance. Under the new regime FENZ requires additional funding to absorb rural fire costs and to cover new ongoing operating costs addressing things such as gaps in rural fire services, support for local communities and volunteers, and transition costs.

To help fund those additional and ongoing costs, on 1 July 2017 levies on property were increased by approximately 40%, from 7.60 cents 10.60 cents per \$100 of insured value, although the levy on residential owners is capped at \$100,000 of insured value, or \$106 per property. There is no cap on non-residential levies. Levies on motor-vehicles increased to a flat rate of \$8.45 (from \$6.08).

The increased levy, together with other measures that are set to come into effect by 1 July 2019, seem to place a disproportionate funding burden on the commercial property sector relative to its usage of fire and emergency services.



2.

EARTHQUAKE COMMISSION LEVIES INCREASE - AGAIN

The Government announced an increase to the Earthquake Commission levy as part of Budget 2017.

Under the changes, EQC's premium will be raised to 20 cents per \$100 of cover, from 15 cents per \$100 of cover, from 1 November 2017.

The increase will assist in rebuilding the Natural Disaster Fund which has been depleted as EQC settles its liabilities including the Canterbury and Kaikoura earthquakes.

It also ensures that EQC Cover continues to support high levels of insurance in New Zealand and provide first loss insurance cover for residential dwelling, contents and land damage for New Zealand households.

A highly regarded colleague Keith Hales of Wellington recently observed that certain types of insurance may become too expensive for the average homeowner. For example in Los Angeles the excess is \$30,000 USD and in the event of a claim if the home owner does not come up with the excess, the insurer is entitled to withdraw from the claim.

TICK BOXES ARE EASY BUT WILL NOT WORK IN COURT

Thousands of sites rely on hazard company and safety sites for the provision of generic tickboxes. It is important to understand that this will not work in the event of a serious accident. You need to write a formal request to all Subbies as indicated below.

If you have sub contractors we recommend that you have a formal contract that will define obligations in detail and in addition an addendum as follows:

1. We need proof that you actually have and will use **site specific safety plans and tool box** meetings and you need to provide us with an example.
2. We need evidence of the **training and qualifications of the workers and Independent Contractors** (if any). This means a summary of their various qualifications including driving licences plus NZQA unit standards, plus recognised formal tertiary qualifications.
3. We need proof that you **annually carry out Training Needs Analysis for every worker** for every type of work and for every machine. Arising from the TNA there will be JTA or job task analysis for each type of job/machine and 10-30 of these formats are required.
4. We need proof that **you know what to do in the event of an accident or reportable incident** and provide us with a copy of the forms that will come into play. You must also be able to prove that hazards and risks are analysed regularly. There must be a table for every type of important hazard or risk as the case may be. We also need to have a copy of the Checklists that you use as proof of monitoring / verification.
5. We need to know **that you have adequate insurance**. This means Public Liability for damage to plant or property, Material Damage insurance for Buildings and Vehicles plus Compliance Professional Indemnity Insurance to provide compensation in the event of a serious accident that involves legal actions leading to legal costs and court costs plus reparations.

3.

COMPANIES MUST LEARN FROM THEIR MISTAKES

WorkSafe says businesses must learn from their health and safety mistakes and ensure changes are effective and address the risks in the workplace.

The warning comes after The Tasman Tanning Company was sentenced today in the Wanganui District Court just five years after they were fined for similar health and safety breaches.

The sentencing follows an incident in April 2016 where a forklift driver was exposed to hydrogen sulphide gas, a well-known hazard in the tanning industry. The worker was shifting containers when he was overcome by the gas. The worker lost consciousness twice, resulting in a concussion, facial gashes and a nose injury.

The Tasman Tanning Company has a prior conviction for failing to ensure its employees' safety at its other Wanganui plant after exposure to hydrogen sulphide gas left four workers unconscious in 2012.

WorkSafe's investigation into the 2016 incident found multiple failings by the company. These failings included a lack of training and warnings, failure to provide personal gas monitors, ineffective communication between workers at shift changes and failure to have policies in place to adhere to safe operating procedures.

"Tasman Tanning was well aware of the risk posed to its workers by hydrogen sulphide exposure. Following the 2012 incident, they said they would sharpen up their processes and while they implemented some changes, they still failed to mitigate risks appropriately" commented WorkSafe's Chief Inspector Response and Investigations Keith Stewart.

"These failures led to unnecessary and unacceptable injuries to a worker. When a business is held to account for breaches of the law, ensuring the breaches aren't repeated is a cornerstone of good health and safety practice. Failing to do so is a breach of workers' rights to a safe workplace" he said.

The Tasman Tanning Company Ltd was fined \$380,000 and ordered to pay reparations to the victim of \$18,000. Notes:

- The final fine imposed was \$380,000.
- The court ordered reparation of a total of \$18,000 to the victim.
- The Tasman Tanning Company Ltd was charged under sections 36, 48(1) and (2)(c)

