

New sentencing approach under Health and Safety at Work Act 2015

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The recent decision in *Worksafe New Zealand v Rangiora Carpets Ltd* provides further guidance on sentencing under Health and Safety at Work Act 2015.

Rangiora Carpets Limited was prosecuted for health and safety breaches after a worker slipped off the side of a mezzanine and fell through the false ceiling, constructed primarily of plasterboard, to the floor 2.5 metres below. The company appeared in the Christchurch District Court on 4 October 2017 for sentencing and in a judgment released on the same day the court fined the company \$157,500 and ordered it to pay reparation to its worker of \$20,000 and prosecution costs of \$1,228.

A key issue for determination by the Court was the approach to sentencing under the new Act. Under the old Health and Safety in Employment Act 1992 sentencing regime, the court adopted a three step approach to sentencing.

- Step one: assessing the amount of reparation;
- Step two: fixing the amount of the fine; and
- Step three: making an overall assessment of the proportionality and appropriateness of the total imposition of reparation and the fine.

Under the new Act, the Court now has the ability to make a variety of ancillary orders outlined in the Act.

These include adverse publicity orders, training orders, and orders to pay the regulator's costs in bringing a prosecution.

Judge Gilbert stated that, given these additional orders that are now available, it is now necessary to insert an additional step between steps two and three of the traditional sentencing framework. The new four step approach is therefore as follows:

- Step one: assessing the quantum of reparation;
- Step two: fixing the amount of the fine; and
- **Step three: ancillary orders**
- Step four: overall assessment

The Judge went on to consider what the Court's approach to each step should be, as follows:

- Step one - There is no material changes in the way in which the court should go about assessing reparation under the new Act.
- Step two - Under the old regime, the starting point for a fine involved assessment of culpability within the following scale:
 - o Low culpability: fine of up to \$50,000;
 - o Medium culpability: fine of between \$50,000 and \$100,000;
 - o High culpability: fine between \$100,000 and \$175,000; and

- o Extremely high culpability: fine between \$175,000 and \$250,000.
- Step two – the Judge then adopted further bands taking into account the huge increase in maximum sentence under the new Act. These new culpability bands are as follow:
 - o Low culpability: fine of up to \$150,000;
 - o Low/Medium culpability: fine of between \$150,000 and \$350,000; and
 - o Medium culpability: fine between \$350,000 and \$600,000; and
 - o Medium/High culpability: fine between \$600,000 to \$850,000
 - o High culpability: fine between \$850,000 and \$1,100,000; and
 - o Extremely high culpability: fine between \$1,100,000 and \$1,500,000.
- Step three – The potential ancillary orders in the Act are quite wide. Judge Gilbert ordered the company to pay \$1,228 in costs, which represented 50% of actual time spent by WorkSafe’s internal legal team.
- Step four – Judge Gilbert stated that when considering financial capacity of the company, the real question is what level of fine will “bite” for the company and serve the purposes of deterring it from further offending in the future and encourage other businesses to comply.

In his decision in this case, Judge Gilbert assessed the company’s culpability to be at the low/medium band and adopted a starting point of \$300,000.

Accordingly, as anticipated, the court has adopted a significantly higher scale for assessing culpability under the new regime. It is also noteworthy that, for the first time, the court ordered the company to pay the regulator’s costs in bringing a prosecution. This case demonstrates that under the new regime the courts will not hesitate to make ancillary orders (payment of regulator’s costs, adverse publicity, restoration, undertake a specified project for the general improvement of work health and safety and so on) in addition to the usual fine and reparation orders.

If you would like more information regarding the above, or have any questions, please contact us.

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