



Achieving Compliance with Section 19 WHS Act

PCBUs who do not satisfy their primary duty of care (section 19 WHS Act) may find it a costly and daunting experience. This article sets out a number of recent examples of WHS prosecutions that illustrate that point eg. one PCBU is now in jail serving a 12 years prison sentence.

1. \$650,000 Fine

A waste management company was prosecuted and fined \$650,000 because an employee was knocked to the ground and suffered minor injuries when a production trial of a new solvent created a fiery explosion. **Why?** The PCBU **failed to provide sufficient information and supervision** about the new solvent to their workers.

2. \$105,000 Fine

A fast food chain was prosecuted and fined \$105,000 when a worker fell into a tank of oil that had been placed on the floor behind him. **Why?** The PCBU had **failed to provide and maintain a safe system of work and failed to provide adequate information training and supervision.**

3. \$590,000 Damages

A worker making coffee in a hospital kiosk suffered an arm injury at work and eventually sued her employer for damages. She was awarded \$590,000. **Why?** The Court of Appeal ruled that the employer **failed to provide a safe system of work** and that had been a major cause of her injury.

4. 12 Years Jail Sentence

The owner of a trucking business knew that a truck had faulty brakes but sent a worker off to deliver a load in that truck. The worker was killed in a traffic accident. **The owner was not prosecuted under WHS law but was charged with endangering life and manslaughter under the criminal law and was sentenced to 12 years imprisonment.**

Achieving Compliance with Section 19

All four of the above examples from Court decisions in 2016/17 involved WHS requirements listed in section 19(3) of the WHS Act. We covered those requirements in our recent article, [*Finance Approval for WHS Expenses.*](#)

Section 19 of the WHS Act is the PCBU's Primary Duty of Care. Section 19 (3) says that a PCBU must ensure so far as reasonably practicable that:

- the work environment is without risks to health and safety
- the plant and structures are safe
- the systems of work are safe
- the use, handling, and storage of plant, structures, and substances are safe
- there are adequate facilities for the welfare at work of workers
- information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work is provided
- that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers

When you get right down to it compliance with Section 19 can be achieved when the PCBU, the PCBU's Officers, the Workers, and Others take the necessary actions to satisfy their duty of care regarding the matters in section 19. Lack of appropriate action by anyone in that chain of WHS duties opens the door to the risk of harm, injury and expense.

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