

# WorkSafe prosecutes two quarries over failure to comply

Georgia Quirke-Luping - Mon, 18 Mar 2019

WorkSafe has laid charges against two quarry operations over failure to comply with workplace health and safety legislation.



The operations were summonsed on 8 March and 11 March. The first was charged with failure to meet their duty of care, and for operating under a prohibition notice.

The second was charged with failure to have on site a holder of a Certificate of Competence.

It marks the first time WorkSafe has charged a quarrying operation under the Health and Safety and Work Act, other than as a result of an incident, since its establishment in December 2013.

## MinEx / AQA response

MinEx and Aggregate and Quarry Association chief executive, Wayne Scott, supports WorkSafe's decision to take a stand, particularly as the sites allegedly ignored the directions of the legislation, repeatedly.

He said that the summons indicates WorkSafe is "drawing a line in the sand. If people didn't think they were serious before, they do now."

There "are absolutely no barriers to assistance, for all extractives sites," Scott explained to *Inside Resources*.

"In other words, the help is there for them. But, there are a small number of cases where sites have decided to ignore the regulations."

Scott is mindful that the errors of a few operations need not reflect the wider New Zealand extractive industry.

"The majority of extractive operations are doing the right thing. A small number of operations have risked the reputation of the sector."

Scott notes that before operations are charged, there is a stepped enforcement process undertaken by WorkSafe.

When a WorkSafe inspector visits a site, they may make recommendations and suggest fixes for items of non-compliance.

Upon return to the site, if the inspector is unsatisfied that the issues have been resolved, they may issue an improvement or prohibition notice.

Operations are given a deadline to address the problems identified by the inspector.

Following this, failure to resolve the problems may result in the operations being charged.

"In each of these steps there is an opportunity for them to right their wrongs," Scott said.

## Legislation

A key feature of the Health and Safety at Work Act is the inclusion of a person conducting business undertaking (PCBU).

While a PCBU may be an individual or an organisation, in most cases it will be a company.

A PCBU must ensure, as is reasonably practicable, the health and safety of workers, and that other people are not put at risk by its work. This is called the "primary duty of care".

In relation to the charge of a failure to meet their duty of care, the PCBU must ensure, among other things that "the provision and maintenance of a work environment is without risks to health and safety; and the provision and maintenance of safe plant and structures".

The fine for failure to meet duty of care is up to \$50,000.

That same operation was also charged with continuing to operate under a prohibition notice.

Under the HSWA, prohibition notices may be issued by an inspector to stop an activity that is occurring at a workplace, where the risk is extreme, substantial or imminent.

A prohibition notice may be applied to a piece of equipment, or to an entire operation.

The Act says that failure to comply with the rules set in the prohibition notice may result in a fine of up to \$150,000.

The second operation was charged for not having a CoC.

On this issue, the HSWA says, "The quarry operator must ensure that the manager holds a current certificate of competence as an A-grade quarry manager".

A manager appointed to a quarrying operation in which no explosives are used may hold a B-grade quarry manager ticket.