Whakaari Management Limited convicted of charge under the Health and Safety at Work Act 2015

On 31 October 2023 the District Court found WorkSafe had proven a charge brought against Whakaari Management Ltd (WML) arising from WML's management of the island on behalf of the island's owner.

The charge was the only remaining charge to be resolved relating to the Whakaari-related prosecutions, after six of the 13 defendants pleaded guilty and six had the charges against them dismissed.

Judge M E Thomas found the charge under section 37 of the Health and Safety at Work Act 2015 (**HSWA**) to be proved, but dismissed the charge brought under section 36. A section 37 charge relates to a duty where the entity manages and controls a workplace.

WML leased Whakaari from the island's owner, Whakaari Trustees Limited. Its sole business operation was to generate income by granting access to tour operators. Its operations were different to those of merely a passive landowner, particularly in that it enabled commercial walking tours on Whakaari and engaged directly with the tour operators. It therefore managed and controlled the workplace, and the section 37 duty was engaged.

The Judge found WML's failures included:

1. Not engaging the necessary expertise and not taking expert advice necessary to assess risk arising from the conduct of commercial tours on its active volcano; and
2. Not continuing an active and ongoing risk assessment, given the variable and unpredictable conditions and characteristics of Whakaari.

It was not enough for WML to rely on the information provided by GNS Science, or to rely on tour operators conducting their own risk assessments. WML needed to conduct its own risk assessment, and to take steps to verify what tour operators were doing to assess risks.

While the charge was not directly brought relying on what happened during the 9 December 2019 tragedy, Judge E M Thomas noted the tragedy bears out that if WML fully understood the risk posed by the island, it would have had two options:

1. to stop tours entirely; or
2. to implement effective controls to eliminate or minimise the risk (if such controls were possible).

To make out the charge, WML's breach of duty did not need to have caused the harm suffered. The failure only needed to have exposed an individual to a *risk* of death or serious injury. The Judge found WML's failure to undertake necessary risk assessments was a significant and substantial cause of an individual being exposed to risk of death or injury.

WML (subject to the potential for an appeal) will now be sentenced. The relevant offence under the Health and Safety at Work Act 2015 carries a maximum fine of $1.5 million.

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