

## Whakaari Appeal Judgment: Clarifying Landowner Responsibilities under the HSWA

**Following our earlier article discussing the District Court judgment in WorkSafe's prosecution of Whakaari Management Ltd (WML) under the Health and Safety Work Act 2015 (HSWA), the High Court has now overturned WML's conviction. The appeal judgment (Whakaari Management Ltd v WorkSafe New Zealand [2025] NZHC 288) provides clarity about the legal framework for the health and safety obligations of landowners, particularly those who lease land for commercial activities**

The District Court had found that WML, which leased Whakaari and granted access to tour operators, was more than a passive landowner and had an active role in facilitating tours, triggering its duty under section 37 of the HSWA. The District Court ruled that WML breached this duty by failing to conduct independent risk assessments or engage experts, instead relying on third-party operators and GNS science, which it deemed a significant omission exposing individuals to serious harm.

The appeal argued that the District Court wrongly interpreted the requirements for a PCBU's duty under section 37. WML contended that the judge wrongly assessed its "management and control" over operations, which was not supported by evidence and therefore wouldn't trigger section 37 of the HSWA.

The High Court took a narrower view of section 37, ruling that for a duty to arise a landowner must exert active control over workplace operations. Merely granting access or setting general conditions does not create an obligation under the HSWA.

The High Court found that WML did not owe a duty under section 37 because it did not manage or control the operations on Whakaari. It distinguished between passive landowners and those exercising actual control concluding:

- Mere land ownership does not trigger section 37 obligations, WML leased the land and granted tour operators access but did not direct or supervise commercial activities.
- Liability requires active involvement in workplace management, WML's role was limited to issuing licenses and collecting fees, it was not operationally involved in conducting tours or assessing daily risks.
- Delegating responsibility to operators is valid, WML appropriately delegated and relied on independent tour operators for risk assessments and safety measures.

As no duty existed under section 37, the Court ruled there was no breach and no basis to conclude WML exposed individuals to serious harm.

The High Court's decision clarifies the extent of health and safety responsibilities for landowners, particularly 'passive' owners who merely lease or licence the land:

- Where Landowners do not actively manage workplace operations they are unlikely to owe duties under section 37.
- Liability under section 37 depends on whether the landowner actively controls work activities, rather than merely owning or leasing the land.

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**Our thoughts**

This ruling is likely to influence how WorkSafe pursues future prosecutions involving landowners, reinforcing that merely granting access land for commercial purposes does not automatically entail assuming operational oversight.

Those granting access to land for commercial activities should carefully assess their contractual arrangements and ensure they are not unintentionally assuming health and safety responsibilities.

Where the landowner also carries out work on the land, the landowner will continue to have specific health and safety duties.

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