

WorkSafe charges Whangārei Boys High School Board over student death

On 9 May 2023 a 15 year old student of Whangārei Boys High School died on a school trip to Abbey Caves. Almost a year later WorkSafe has laid charges against the Board for health and safety failings under the Health and Safety at Work Act 2015.

School Boards are a "Person Conducting a Business or Undertaking" (**PCBU**) under the Health and Safety at Work Act 2015 (**the Act**). Just like any business, Boards have health and safety obligations under the Act. When a School Board fails to meet these duties, it can be charged.

WorkSafe investigated the incident and laid charges against Whangārei Boys High School Board (**the Board**) under sections 36(1)(a) and 36(2) of the Act.

The charges allege the Board failed to ensure, so far as is reasonably practicable, the health and safety of workers who work for the Board, and that the Board failed to ensure, so far as is reasonably practicable, that the health and safety of other persons (the students) was not put at risk from work carried out.

In the event the Board is convicted, and it is found that the failures exposed individuals to a risk of death or serious injury / illness, the Board could be liable for a fine not exceeding \$1.5million. It could also be required to pay reparation for emotional harm such as to the deceased student's family and other students involved.

Whilst it has not occurred in this case, under the Act, WorkSafe also has the ability to prosecute individuals for health and safety failings. Individual School Board members are exempt from personal liability, but principals are treated differently. This is intended to acknowledge the volunteer nature of Board members governance positions. Principals (as "officers") can still

be prosecuted for failing to comply with their due diligence duties.

There is little guidance as to when a Court will find an officer personally liable in these types of situations. The former Ports of Auckland Chief Executive is currently on trial defending charges for alleged health and safety failings. The outcome of that trial may provide greater clarity in this area.

It is understood that at the time of the Abbey Caves incident, there was a risk assessment which warned of potential flooding, and a MetService rain warning. Despite this, the trip proceeded. If the Board defends the charges the Court will be tasked with determining whether the Board failed to fulfil any of its health and safety obligations and whether that failure exposed anyone to a risk of serious injury or death.

This is a very sad situation, and a tragic reminder of School Boards' health and safety obligations. WorkSafe has urged other schools to reflect on their own systems and processes for education outside the classroom.

The legal requirements are there for a reason, and control measures should be properly analysed. Risk assessments should be pulled apart and critically tested, asking questions such as what if this happens, what if that happens. The old saying "a failure to plan is a plan to fail" is true, but it is also the case that a plan can have gaps, and must be carefully assessed.

Look at each situation objectively, with a view to identifying those warning signs in advance. Hindsight is all very well, but with health and safety, you need to identify those risks in advance and take all reasonable steps to protect staff and students.

Want to know more?

If you have any questions about health and safety obligations, please contact our specialist [employment team](#).