

A policy is not a control: what NZ and Australian regulators now expect

Two different legal systems, two different regulators — and, read side by side, the same underlying finding: wherever a vehicle or mobile plant shares space with people, a safety measure that exists on paper isn't the same as one that holds up in real time.

157

Accepted forklift injury claims in Victoria in a recent year — 65 involved a pedestrian

26

Successful mobile-plant prosecutions in Victoria in 2025, second only to falls from height

70

Work-related fatalities recorded across New Zealand in 2024

\$190K

Personal fine and costs for a NZ officer's individual due-diligence conviction, 2024

WHY PUT THESE TWO COUNTRIES SIDE BY SIDE

Different laws, the same pattern

Australia and New Zealand run separate legal systems and separate regulators. Victoria, specifically, isn't even harmonised with the rest of

What they share is a pattern, visible once the enforcement decisions from both sides of the Tasman are read side by side — and it isn't

Australia — it opted out of the national Model WHS framework and runs its own OHS Act and Regulations. There's no shared statute here, and no single line of case law feeding both countries' enforcement.

limited to forklifts, or to warehouses. Cranes on container terminals, loaders in sawmills, straddle carriers, yard trucks: wherever a vehicle and a person share the same operating space, the organisation involved usually did have a safety measure in place. A policy, a traffic management plan, a marked exclusion zone. What both regulators keep finding, independently, is that a measure existing on paper isn't the same as a measure that holds up under real operating pressure.

AUSTRALIA

Victoria's Regulation 109, and the cases testing it

Regulation 109 of Victoria's OHS Regulations 2017 places a duty on employers operating powered mobile plant: eliminate, or if that's not reasonably practicable, reduce the risk of the plant colliding with pedestrians or other objects. It sits within Part 3.5 of Victoria's own regulations, not the Model WHS Regulations used elsewhere in Australia — a distinction worth getting right, given how often it gets blurred.

WorkSafe Victoria's own *Forklift Safety Guidebook*, published in May 2024, requires employers to apply the hierarchy of controls and states plainly that administrative measures — procedures, signage, training — aren't sufficient as the primary protection on their own. It goes further than most regulator guidance typically does, naming proximity-detection technology that automatically slows mobile plant as a control worth retrofitting into active sites.

D'Orsogna · \$200,000 fine · December 2025

No traffic management plan, no physical barriers, no marked walkways in a dispatch area. The system in practice relied on forklift drivers and pedestrians making eye contact.

Minus 1 Refrigerated Transport · \$50,000 fine · repeat offender

A breach of the required three-metre separation between pedestrians and mobile plant — the second incident of its kind at the same company.

LH Holding Management · Victoria's first forklift-related workplace manslaughter conviction

The fine was increased to \$3 million on appeal.

Mobile plant breaches were the second most common category of successful WorkSafe Victoria prosecution in 2025 — behind only falls from height.

Forklifts dominate the numbers because they're the most common powered mobile plant on an Australian worksite — but Regulation 109 isn't written around forklifts specifically. It applies to any powered mobile plant, and the same standard is increasingly being tested against cranes, loaders and straddle carriers as those fleets come under closer inspection.

NEW ZEALAND

HSWA section 44, and what the Gibson case decided

New Zealand's Health and Safety at Work Act adds a dimension Victoria's regulations don't. Section 44 places a personal due diligence duty on officers of a PCBU —

That distinction sits at the centre of *Maritime New Zealand v Gibson* [2024] NZDC 27975. Following the death of stevedore Pala'amo Kalati at the Ports of Auckland in August

including a chief executive — separate from the organisation's own duty. In New Zealand, it isn't only the business that can be found to have failed. An individual executive can be too.

2020, Maritime New Zealand brought separate charges against Ports of Auckland Limited and its then chief executive, Tony Gibson. The company pleaded guilty in 2023. Mr Gibson contested the charge against him personally, was found guilty in November 2024 of failing to exercise due diligence under section 44, fined \$130,000 plus \$60,000 in costs — and the High Court upheld that conviction on appeal in 2026.

The court's findings centred on how the exclusion zone around active crane operations was managed day to day. A documented policy existed, but the evidence showed it was inconsistently communicated and inconsistently enforced, and a supervisory role connected to lashing operations had been removed from the site. The case turned on whether a written policy, unsupported by a system that reliably enforces it in real time, is enough to satisfy an officer's due diligence duty.

Gibson isn't an isolated finding. WorkSafe New Zealand's own prosecution record shows the same pattern recurring, at different companies, in different industries, over almost a decade.

Toll Networks (NZ) Limited • \$506,300 fine and reparations • 2018

A worker was fatally struck by pallets falling from a reversing forklift at an Auckland freight depot. WorkSafe found the company's pedestrian safety system relied on administrative controls that were, in the regulator's own words, ambiguous and contradictory.

Trade Depot Limited • \$350,000 fine, \$141,502 reparations • 2024

A 68-year-old customer waiting in a collections area was struck by a reversing forklift with non-functioning warning lights. WorkSafe's investigation found no effective traffic management plan existed to separate pedestrians from moving vehicles at the site.

The pattern isn't confined to warehouses and ports, either. WorkSafe's own research names quad bikes and other farm vehicles as the leading source of serious harm and fatality in New Zealand's agricultural sector — a different vehicle, a different site, the same underlying interaction between a moving machine and a person nearby.

THE PATTERN

What both regulators are actually asking for

A policy is not a control

Every case above involved an organisation with something written down. None of them had a way to guarantee that measure held up when a worker was tired, new, under time pressure, or simply out of a supervisor's line of sight. That's the gap both regulators keep finding — not that businesses weren't trying, but that intent documented on paper isn't the same as a system that functions without depending on any one person getting it right, every time.

The bar is rising, and it's naming names

WorkSafe Victoria's own guidance now names specific engineering-level technology as the standard it expects in active mobile-plant environments. In New Zealand, HSWA has moved accountability up to individual officers, not just organisations. Read together, both signals point the same direction: what's being asked for is getting more specific, not less, and it's being asked of more people, not fewer.

Administrative controls still matter — they're just not the finish line

Neither jurisdiction is arguing that traffic management plans, training or licensing should be abandoned; both regulators still require them. What the cases above show is that these controls sit lower in the hierarchy for a reason — they depend on people, and people are not a fail-safe. An engineering-level

control is what regulators on both sides of the Tasman are now describing as the layer that has to sit above them.

THE PRACTICAL QUESTION

Not a scare tactic — a test any business can run today

None of this is really about the size of a fine. The more useful question for any safety leader — in a Melbourne warehouse, an Auckland port, or a sawmill in between — is simpler: if an inspector, or a court, asked you to demonstrate that your safety control actually works when nobody's watching, what would you be able to show them?

A policy in a folder answers that question badly. What answers it well is a control that doesn't depend on anyone watching in the first place — one that detects a person without needing a clear line of sight, alerts the operator and the person in the danger zone at the same moment, and, where technically available, can slow the vehicle itself before either of them has to react.

This is where a system like SonaSafe fits into the answer — not by replacing a traffic management plan or a licence, but by closing the gap regulators keep finding underneath them. Non-line-of-sight sonar and UWB detection. Dual alerts, simultaneous, to both people in the interaction. An engineering-level control, configured to the site rather than applied as a generic template. And every one of those events logged automatically, whether anyone happened to be checking or not.

That last part might be the one worth sitting with. Most businesses could describe their safety policy in detail if asked. Fewer could produce the record proving it held up on an ordinary Tuesday afternoon when nobody was checking at all.

SOURCES

WorkSafe Victoria — [Forklift Safety Guidebook](#) (May 2024)

Victorian OHS Regulations 2017, Regulation 109 — legislation.vic.gov.au

WorkSafe Victoria news releases — [D'Orsogna, Minus 1 Refrigerated Transport, 2025 penalties summary](#)

WorkSafe New Zealand — court summaries for [Toll Networks \(NZ\) Limited](#) and [Trade Depot Limited](#)

WorkSafe New Zealand — [research on quad bikes and farm vehicle risk](#)

2024 New Zealand work-related fatality data, via [Lane Neave](#)

Maritime New Zealand — [case summary, November 2024](#)

Maritime New Zealand v Gibson [2024] NZDC 27975

What would a site assessment show at your operation?

Wherever you operate — under Victoria's OHS Regulations or New Zealand's HSWA — the pattern above points to the same starting question. A site assessment is the fastest way to find out where your current controls would hold up, and where they wouldn't.

[Talk to our team](#)

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