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<b>AGENDA ITEM 18   BOARD NOTING PAPER</b>	
<b>To:</b>	The Board
<b>From:</b>	Amandeep Kaur, Group Manager Health Safety and Wellbeing
<b>Reviewed:</b>	Karen Duffy, Director People and Performance Dean Kimpton, Chief Executive
<b>Date:</b>	11 December 2024
<b>Title:</b>	Analysing Prosecution Drivers for Ports of Auckland Limited Chief Executive and detailing existing control measures at Auckland Transport for Officer Confidence

**Aronga / Purpose**

1. To examine the prosecution of Tony Gibson, former Chief Executive of Ports of Auckland Limited (POAL), under the Health and Safety at Work Act 2015 (HSWA) and outline existing controls measures in place at Auckland Transport (AT) to support Officer Confidence under HSWA.

**Te horopaki / Background**

**Tony Gibson’s Prosecution**

2. The case involved allegations under Section 44 of the HSWA, which imposes due diligence duties on officers, including Chief Executives and board members, to ensure their organisation complies with its primary duty of care under Section 36.
3. The prosecution arose from alleged deficiencies in POAL’s health and safety systems, particularly concerning high-profile workplace incidents that resulted in fatalities.

**Outcome**

4. Tony Gibson was found guilty under Section 48 of the Act, while the lesser charge under Section 49 of the Act was dismissed.

5. The key factual findings were as follows:

- a) As Chief Executive, Mr Gibson was responsible for health and safety matters at POAL at the 'executive' level and had been delegated authority by the Board to implement its Health and Safety policy. Even when Mr Gibson assigned responsibilities or delegated authority to others to assist him, he remained responsible for monitoring and reviewing the performance of his subordinates.
- b) The Health and Safety Steering Committee had failed to carry out its functions in line with the POAL's Health and Safety Manual. Additionally, POAL failed to prepare its annual health and safety strategy plans for the 2020 and 2021 financial years, which Mr Gibson was responsible for approving.
- c) POAL's Executive Team did not advance the recommendations from a 2018 audit in a timely manner. One of those recommendations was to assign responsibilities and accountability for responding to recommendations within the Executive Team. Mr Gibson was aware of the report and the lack of timely response.
- d) Mr Gibson was fully aware of the critical risks associated with stevedoring. However, evidence demonstrated a lack of control management for these critical risks. Additionally, reporting on employee practices did not convey sufficient information to Mr Gibson or the Board to assure them that the risks were being addressed.
- e) Mr Gibson was aware of POAL's four previous convictions under health and safety legislation and was involved in the decisions to plead guilty in each case. From late 2018 onwards, he was on notice that POAL had been experiencing ongoing difficulties with monitoring the work on the wharves and was responsible for implementing appropriate systems to address those failures.
- f) There was a widespread culture amongst the stevedores of 'cutting corners' on night shifts by violating the 'three container width rule'. POAL's training materials and documentation were not clear and consistent about the rule,





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leading to varied worker understanding., This demonstrated that POAL had failed to provide adequate and consistent training.

**Sector-Wide Relevance**

- 6. The case has been a watershed moment for health and safety governance, placing heightened expectations on Officers to demonstrate active and informed oversight.

**Me mōhio koe / What you need to know**

**Key takeaways and legal context**

- 7. The HSWA requires Officers to exercise due diligence to ensure the organisation complies with its duties. While an Officer can rely to some extent on delegation to health and safety personnel to ensure the business has appropriate resources and processes to manage risks, the Officer is ultimately responsible for the health and safety of the business and cannot blindly rely on such delegation. This remains the case even for businesses like POAL, with complex structures and many layers of hierarchy.
- 8. The decision confirms that while the role of a Chief Executive is demanding, health and safety oversight is equally important and cannot be neglected in pursuit of other 'more attractive' business activities. Key duties for Officers are:
  - a) Fulfilling due diligence obligations, including:
    - i. Acquiring and maintaining current knowledge of health and safety matters.
    - ii. Understanding the operations and their associated risks.
    - iii. Ensuring the availability of appropriate resources and processes to manage risks.
    - iv. Monitoring compliance and incident management processes.
  - b) Accounting for Systemic Failures:

- i. Prosecution highlighted the increasing focus on leadership accountability for systemic safety issues.
- ii. Individual Officers cannot delegate responsibility for ensuring health and safety systems are effective.

**Overview of Existing Control Measures at AT**

- 9. Robust governance frameworks and operational controls are already embedded to manage health and safety risks. The Officers and leadership team demonstrates a visible and active commitment to health and safety through regular site visits, engagement with staff, and reinforcement of safety values.
- 10. Comprehensive reporting systems provide Officers with visibility into safety performance and compliance.
- 11. Ongoing training and independent audits ensure continuous improvement and alignment with legal standards.
- 12. Van Schaik Health and Safety Solutions (VS) carried out a Health and Safety (H&S) Business Improvement Review in October 2022. The purpose of the review was to determine what progress has been made since the original Impact H&S Review in 2018, and the H&S Business Improvement Review completed by VS in 2021. During the review it was identified that significant progress has been made across all key elements, with some completed and others underway. Notably, the requirement for an online Occupational Health and Safety Management System (OHSMS) is in planning phase, with a business case being developed.

**Ā muri ake nei / Next steps**

**Strengthen Due Diligence Practices**

- 13. Officers may take guidance from the recently released report by the Institute of Directors on health and safety due diligence. The comprehensive guidance, along with the District Court's decision regarding Mr Gibson, now provides much needed direction to Officers in fulfilling their obligations under the Act.





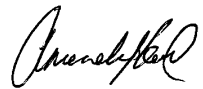
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Board Meeting| 18 December 2024  
 Agenda item no. 18  
 Closed Session

### Ngā whakapiringa / Attachments

Attachment #	Description
1.	Safety Leadership Walk – Guideline
2.	Leadership Safety Walk form

### Te pou whenua tuhinga / Document ownership

Submitted by	Recommended by	Approved for submission
Amandeep Kaur <b>Group Manager, Health, Safety and Wellbeing</b>	Karen Duffy <b>Director People &amp; Performance</b>	Dean Kimpton <b>Chief Executive</b>
		



# Health, Safety and Wellbeing Leadership Safety Walk

*(Example questions and discussion points)*

When conducting safety walks, Officers/Leaders should ask a variety of questions to ensure an assessment of workplace safety and culture. Key areas to address include compliance with health and safety regulations, employee engagement, and hazard management.

Some example questions and/or points for discussion can be:

<b>1. General Safety Culture</b>
<ul style="list-style-type: none"> <li>• How is safety viewed and prioritised on a day-to-day basis here?</li> <li>• Are there any areas where safety practices could be improved?</li> <li>• How do workers feel about the safety policies in place?</li> </ul>
<b>2. Hazard Identification and Management</b>
<ul style="list-style-type: none"> <li>• What are the most common hazards in this area, and how are they managed?</li> <li>• How often are risk assessments conducted, and how are they followed up?</li> <li>• Are workers comfortable reporting hazards or near-misses? What's the process for doing so?</li> </ul>
<b>3. Training and Competence</b>
<ul style="list-style-type: none"> <li>• Have all workers received the necessary safety training for their roles?</li> <li>• How often are safety training or refreshers conducted?</li> <li>• Are workers aware of the emergency procedures, and have they been adequately practiced?</li> </ul>
<b>4. Compliance with Regulations</b>
<ul style="list-style-type: none"> <li>• Are all health and safety regulations (e.g., HSWA 2015) being adhered to in this area?</li> <li>• Are any audits or inspections overdue? If so, why?</li> <li>• How is compliance monitored and reported to the leadership team?</li> </ul>
<b>5. Safety Equipment and PPE</b>
<ul style="list-style-type: none"> <li>• Is all personal protective equipment (PPE) readily available and in good condition?</li> <li>• Are workers using the correct PPE for their tasks?</li> <li>• Is safety equipment regularly maintained and checked?</li> </ul>
<b>6. Incident Response and Learning</b>
<ul style="list-style-type: none"> <li>• Have there been any incidents or near-misses recently? If so, what has been learned from them?</li> <li>• How is the investigation process handled after an incident?</li> <li>• What steps have been taken to prevent a recurrence of recent incidents?</li> </ul>
<b>7. Worker Engagement and Feedback</b>
<ul style="list-style-type: none"> <li>• Do workers feel they have a voice in safety matters? How is their feedback gathered and acted upon?</li> <li>• Are there any safety concerns workers feel aren't being addressed?</li> <li>• What suggestions do workers have for improving safety?</li> </ul>
<b>8. Workplace Environment</b>
<ul style="list-style-type: none"> <li>• Is the work environment free from clutter and obstructions that could cause accidents?</li> <li>• How is the general housekeeping? Are walkways, stairways, and exits clear and accessible?</li> <li>• Is noise, lighting, or ventilation an issue here?</li> </ul>
<b>9. Contractor and Visitor Safety</b>
<ul style="list-style-type: none"> <li>• Are contractors and visitors briefed on site-specific safety procedures before entering the site?</li> <li>• How is contractor compliance with safety rules monitored?</li> </ul>





# Health, Safety and Wellbeing Leadership Walk Form



<b>Date:</b>	<b>Time:</b>
<b>Leadership walk completed by:</b>	<b>Project/Facility:</b>
<b>Accompanied by:</b>	<b>Physical location:</b>

**Other people involved:**

Employee  
  Visitor  
  Customer  
  Temp  
  Contractor  
  PT  
  Other: \_\_\_\_\_

**Work activity / environment / equipment observed:**

**Positive observations (if any):**

**Hazards observed/encountered (unsafe actions or unsafe conditions if any):**

**Actions taken (immediate) / Opportunities for Improvement (suggestions if any):**

**Attach any pictures or relevant documents. This form must be entered into Synergi so actions can be tracked to completion.**

