



Officer Due Diligence: Gibson v Maritime New Zealand

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Abstract

The High Court in Gibson v Maritime New Zealand [2026] NZHC 813¹ recently upheld the District Court's conviction and sentence of Mr Gibson.

While the appeal is currently before the Court of Appeal, this article summarises some key findings and offers structured, practical guidance for health and safety practitioners advising CEOs, executive teams, and boards in the meantime.

What health and safety leaders should be telling CEOs, executive teams and boards right now while we await the Court of Appeal decision

Recap: What Happened

In 2020, a stevedore working a night shift at Ports of Auckland (POAL) was killed when a container dropped due to a failed interlocking mechanism.

Mr Gibson was the Chief Executive of POAL at that time, and held overall executive-level responsibility for health and safety at POAL, including as a member of the Health and Safety Committee responsible for monitoring and approving health and safety procedures.

He was charged in 2021 with breaching his officer duty under the Health and Safety at Work Act 2015 (HSWA) and pleaded not guilty in mid-2022. To date, this remains the only HSWA prosecution brought against a chief executive (ie, non-director) for an alleged breach of the officer due diligence duty.

Key Findings from the District Court and High Court

Following a trial in April and May 2024, the District Court found Mr Gibson guilty of breaching his officer duty, convicted him, and imposed a fine of \$130,000. Together with costs, the total penalty amounted to \$190,000.

- The District Court found that POAL's bow-tie assessments for critical risks, including overhead loads, were inadequate and were not progressed in a timely way. The High Court agreed and found that Mr Gibson had responsibility for overseeing and ensuring progress on that work.
- The High Court upheld the District Court's finding that Mr Gibson was aware the executive team had not progressed external audit recommendations, including those arising from a 2018 KPMG audit, in a timely way. The Court acknowledged that POAL had prioritised contractor management at the Board's direction and faced competing demands, including a health and safety manager vacancy and the impacts of COVID-19. However, it found that these factors did not fully explain the lack of progress, and that work on other recommendations should still have continued. The Court also noted that there were no funding constraints preventing health and safety gaps from being addressed.
- Good leadership intentions and positive health and safety initiatives were not enough to address the cultural and systemic shortcomings identified by the courts. As the District Court observed, "A good leader and a conscientious officer may have the best intentions in the world but may still breach that duty".² The High Court agreed, emphasising that

¹ Anthony Michael Gibson v Maritime NZ [2026] NZHC 813

² Maritime NZ v Anthony Michael Gibson [2024] NZDC27975 at [200]

compliance with the officer due diligence duty is assessed by reference to the actions a reasonable officer would have taken in the same circumstances, rather than by the presence of positive initiatives alone.

The High Court subsequently upheld both the conviction and the fine, endorsing the District Court's reasoning. The key points from the judgments include:

- The District Court found that, particularly on the night shift, there was a culture of stevedores engaging in unsafe practices and cutting corners, including non-compliance with the three-container width rule. The High Court accepted that Mr Gibson did not have actual knowledge of that culture. However, it found that, following the 2018 straddle carrier fatality, he was on notice that POAL had ongoing difficulties adequately monitoring "work as done". The Court considered that, as CEO, Mr Gibson should have ensured that appropriate systems and processes were in place to address the shortcomings identified by POAL's previous failures.
- The District Court found that Mr Gibson was a "hands-on" CEO who exercised considerable influence over the business and its health and safety systems. The High Court agreed with that characterisation but clarified that being a hands-on CEO does not, by itself, increase the standard expected of an officer. Rather, it provides important context when assessing what reasonable steps could be expected in the circumstances. The Court emphasised that what is reasonable will depend on the officer's position, level of influence, and responsibilities within the business.

The Upcoming HSWA Amendments: What Do They Mean for Officers?

The Health and Safety at Work Amendment Act 2026 aims to clarify how the officer due diligence duty applies where a person holds both a leadership role and a worker role within the same organisation.

Where a person is both an officer and a worker, for example, a CEO, the amendment makes clear that the due diligence duty applies to their leadership, oversight, and governance responsibilities. Their day-to-day operational tasks and worker responsibilities are considered separately.

While the High Court recognised that an executive's responsibilities may span both governance and operations, the amendment would make it explicit that an officer's due diligence duty relates to their governance role rather than their day-to-day worker tasks.

For CEOs and other leaders who wear both governance and operational hats, the amendment may provide greater clarity by distinguishing oversight and assurance responsibilities from hands-on operational work. Some grey areas will remain, particularly where decisions involve both strategic and operational elements, but the amendment provides a clearer starting point than the current position.

Practical Takeaways for Officers, CEOs and Boards

While the decision is highly context specific and arose against the backdrop of four previous fatalities, there are nevertheless broader lessons that may be relevant to other businesses and organisations. The following points highlight some key areas for consideration in practice for CEOs and senior leadership teams that support them, and boards.

What CEOs should do

- **Know the critical risks and controls. Verify whether controls are actually effective** - not just at a high level, but enough to ask probing questions whether the controls are functioning.
- **Monitor "work as done,"** not just "work as planned." Require evidence-based reporting reflecting actual workplace reality. Conduct meaningful site visits outside normal hours and during night shift operations.
- **Challenge information.** Ask probing questions during site visits and upon receipt of reports, seek independent advice and verification, and follow up on reported gaps or slow progress.
- **Act on red flags promptly and question green flags too.** If a prior incident, audit, or report puts you on notice that monitoring is inadequate, take concrete steps to address it. Do not wait for a perfect solution and require interim measures.

- **When operational managers propose additional resources to improve compliance monitoring**, ensure those proposals are properly considered and not blocked without your knowledge.
- **Ensure audit recommendations are implemented promptly.**

What Senior Leadership Teams supporting the CEO should do

- **Escalate honestly.** Provide the CEO with accurate, timely information about whether health and safety systems are actually working on the ground. Tell them what they need to hear, not what they want to hear. Do not filter out bad news.
- **Do not block safety improvements without escalating to the CEO.** If you decline a proposal from an operational manager that would enhance safety monitoring, ensure the CEO is informed so they can exercise their own judgment.
- **Own verification in your area of responsibility.** Track, report on, and take responsibility for verifying that critical risk controls are implemented and effectively working in practice.
- **Progress audit recommendations promptly.** Assign actions to individuals with due dates and report barriers to the CEO and Board. Actions should not become overdue.

What Boards should do

- **Set clear expectations** for CEO reporting on critical risk management - require specific updates on how risks are controlled and verified.
- **Consider whether health and safety resourcing** is adequate for the size and risk profile of the organisation. Do you have the right number of people in the right roles? How do you know?
- **Probe whether health and safety reports reflect “work as done”** or merely planned systems.
- **Prioritise without creating blind spots.** If directing the executive to focus resources on one health and safety issue (e.g. contractor management), confirm that other identified critical risks are not being overlooked in the meantime.

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