

Regional Safety Summits

# Recent WHS Prosecutions: Learnings & Insights

Transport for NSW Legal representative

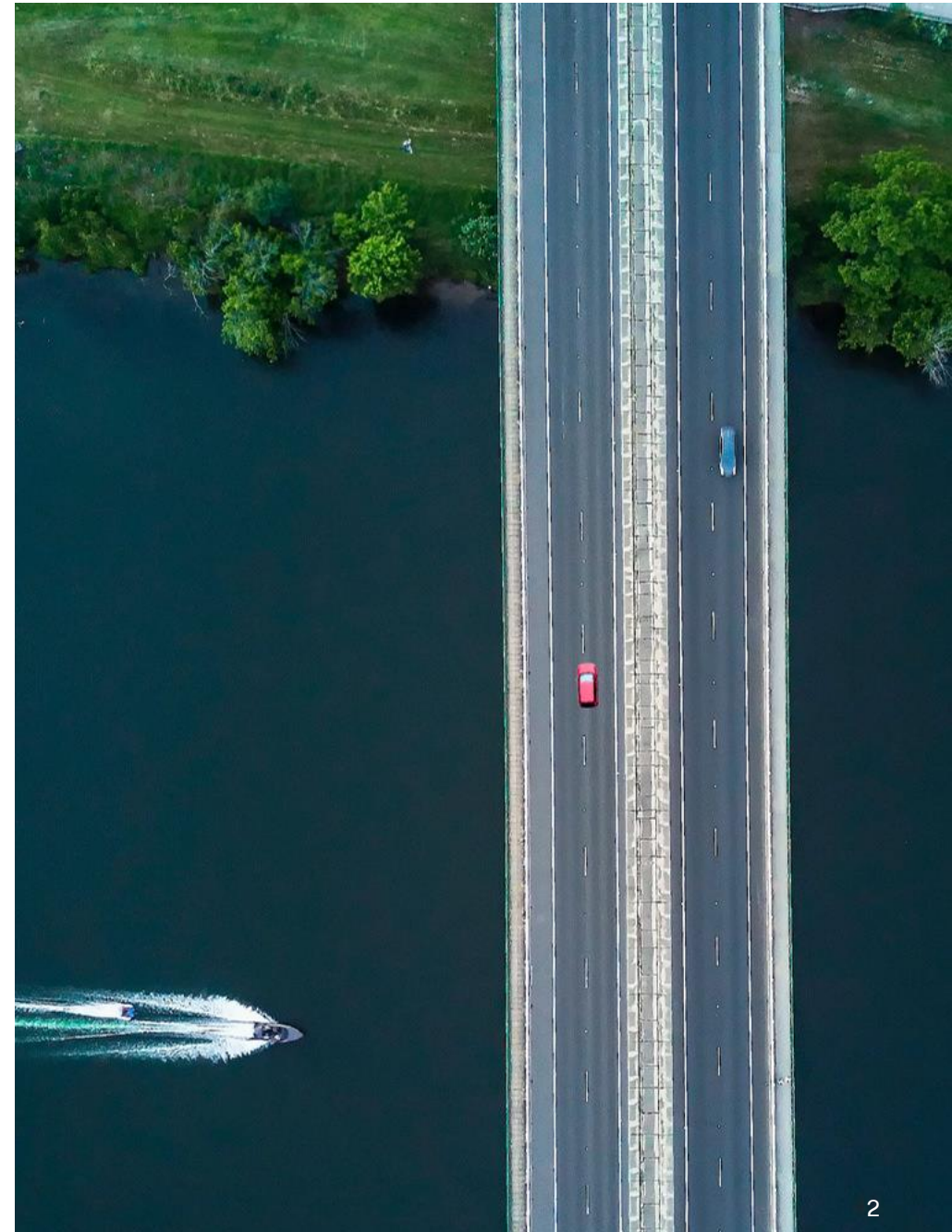


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# Session outline

- 1 SafeWork Prosecutions: Statistics**
- 2 WHS Obligations: Overview**
- 3 Some case studies**
- 4 Questions**



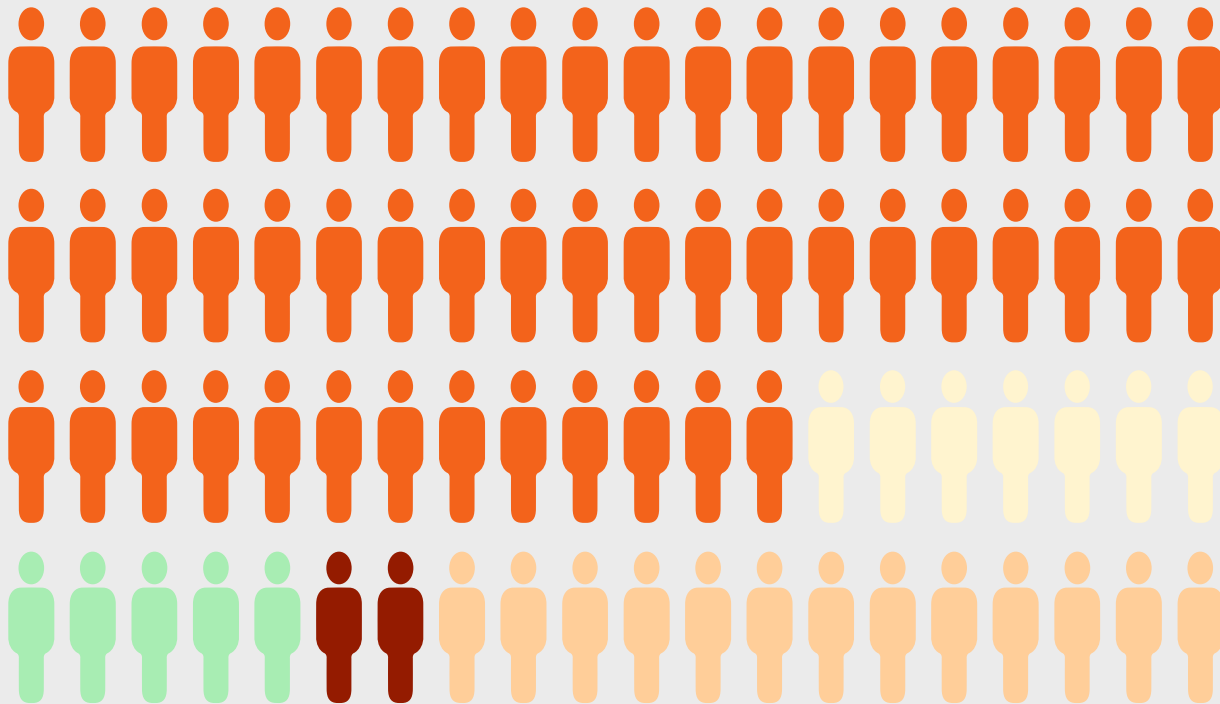


**Question:**

**What do you think are some of the duties and obligations under the Work Health and Safety laws?**

# Since 2017:

## About 195 determined SafeWork prosecutions



Worker fatalities in 2021\*:

- 169: in Australia
- 46: in NSW
- 38%: vehicle collision
- 14%: hit by moving objects
- 11%: falls from height
- 9%: hit by falling objects
- 7%: trapped by moving machinery

\* Source: Safe Work Australia

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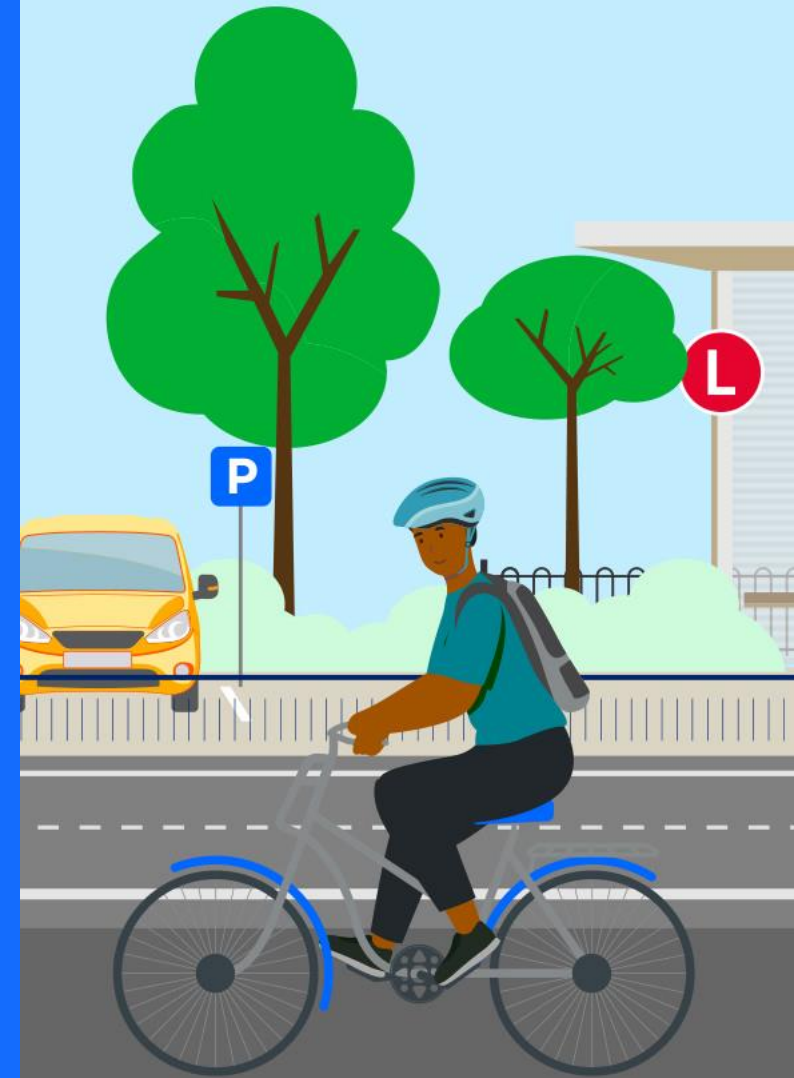
The primary duty holder under the model WHS laws is a PCBU (Person Conducting Business or Undertaking)

A PCBU can be an employer, a sole trader, self-employed person, company or corporation, local government councils or government departments and authorities

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PCBUs must meet their obligations, so far as is reasonably practicable, to ensure the health and safety of workers and other people like visitors and volunteers



# What is reasonably practicable?

Likelihood of hazard or risk occurring

Degree of harm

What the PCBU knows or ought to reasonably know about the hazard

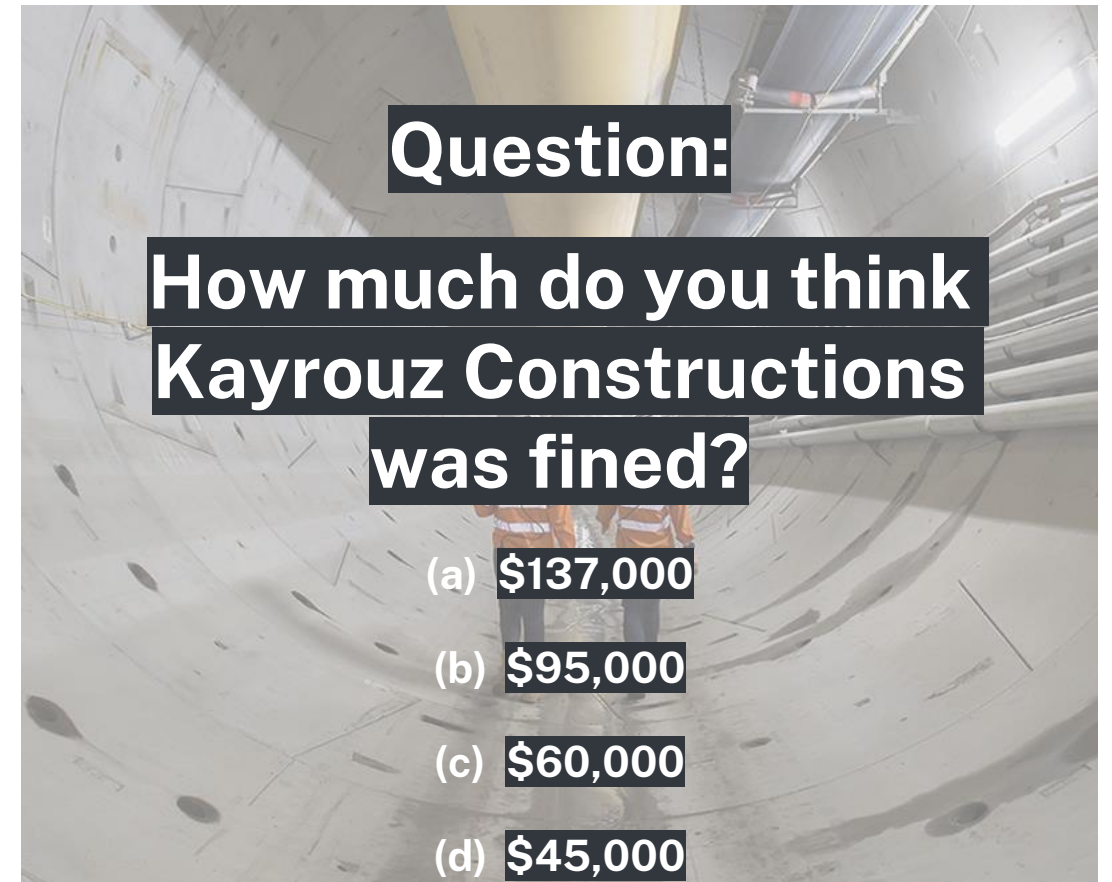
Availability and suitability of ways to eliminate or minimise the risk

Cost of the available ways – is the cost grossly disproportionate to the risk?

# Duty to take steps to eliminate or minimise risks

## Safe Work NSW v Kayrouz Constructions Pty Limited (No.2) [2021]

- Positive obligation to ensure the health and safety of workers and others in the workplace
- PCBUs must continually assess risks in the workplace and take steps to eliminate or minimise them
- PCBUs must be alive to changing conditions and circumstances and ensure that risks are managed





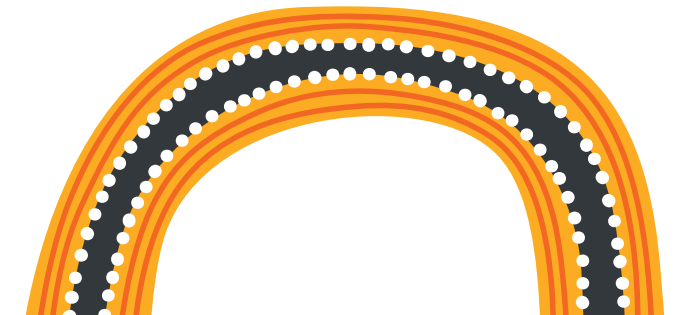
# Duty to ‘consult, co-operate and co-ordinate’ with other duty holders

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## SafeWork NSW v Aceline Plumbing Group Pty Ltd [2020]

- PCBUs that engage in complex work arrangements need to be aware of their work health and safety obligations, especially where it may not be clear who holds obligations with respect to their workers
- Consultation with other duty holders on the hazards, risks and control measures to navigate risks needs to occur
- Co-operation with duty holders to implement the control measures

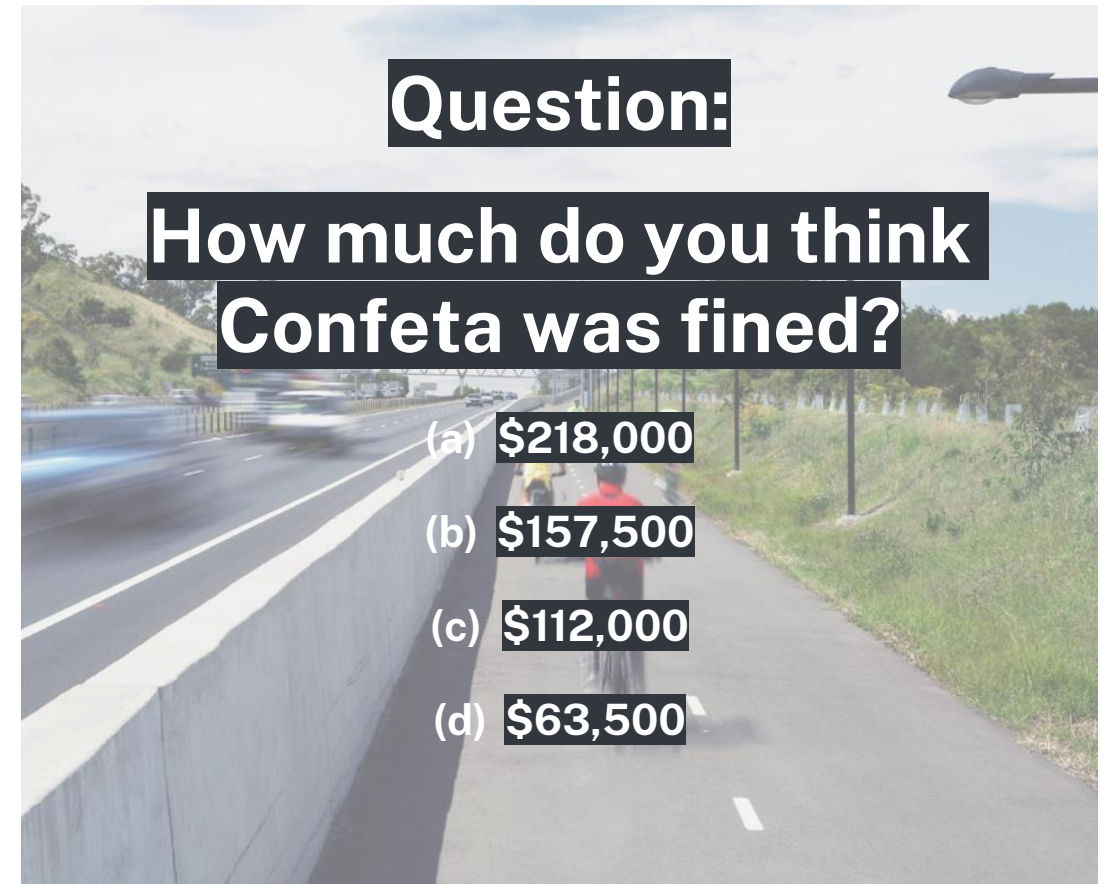
Aceline Australia was fined **\$60,000** for failing to consult, co-operate and co-ordinate with other duty holders and **\$30,000** for failing to notify SafeWork of the incident.



# Duty to provide supervision and notify the regulator

## SafeWork NSW v Confeta Pty Limited [2018]

- Required to provide adequate supervision, instruction and training
- PCBU's have a positive obligation to notify SafeWork NSW of any incidents as soon as they become aware of it through the fastest possible means
- There should be internal policies and procedures to allow incidents to be reported quickly and safely



# WHS duties and obligations extend to volunteers

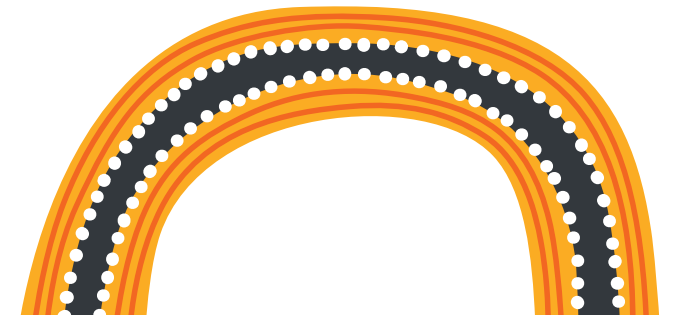
## Case Example

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### **SafeWork NSW v Camden Council [2021]**

Camden Council was issued a \$750,000 fine for:

- Failing to ensure an adequate risk assessment
- Failing to ensure appropriate information and instruction was provided to any volunteers
- Failing to monitor the activities of the volunteers
- Failing to consider the qualifications of the volunteers to complete the work



# Questions?