

# Going private

**DARYL CARRAN** on the experience of bringing to court the first private prosecution under the HSE Act.

One of the most difficult experiences I have had in over 30 years' active involvement in the New Zealand Meatworkers Union is seeing large numbers of members injured in the workplace in accidents that were avoidable.

This was the situation at the Awarua plant of South Pacific Meats Ltd in 2010. The plant was a relatively new one, having only been opened a few years previously, and was the first foray into Southland by the Talley family-controlled AFFCO group.

In 2008 and 2009, our members were reporting to us that a large number of preventable accidents were occurring. These included some seven saw-related injuries within a two-year period, most of which involved amputations of fingers. This was way above the industry average.

When our complaints to management about unsafe practices and the high rate of injuries fell on deaf ears, we sought legal advice as to the options open to us. Our solicitor, Peter Sara, referred us to specialist employment barristers, Peter Churchman and Lauren Beecroft, who advised us of the ability to bring a private prosecution and represented the union throughout the prosecution process.

We were aware that no private prosecution had successfully been brought previously but believed that we had no other way of addressing our members' concerns, given that SPM seemed more interested in scoring political points against the union than

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addressing the poor practices that were causing the accidents.


We were surprised at the length of time that the process took, being two years from start to finish. SPM fought the prosecution every step of the way, even unsuccessfully appealing to the High Court against the conviction imposed by the District Court. Because of the tactics adopted by SPM, instead of the hearing being completed in two days, it ended up taking eight hearing days spread out over four separate court sittings between October of 2011 and January 2012, with the judge's reserved decision coming in March 2012 and the High Court's decision dismissing SPM's appeal being delivered in September 2012.

To others contemplating a private prosecution, I would suggest that it should be a last resort. Dialogue with an employer should be the first option and, in all other cases that we have been involved in, it has produced a satisfactory result. However, when you have an employer who is not prepared to listen or is more interested in attacking the union, it is good to know that there are effective options.

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access to good legal advice.

Overall, our decision to initiate the prosecution has been vindicated. Both the District Court and, on appeal, the High Court, agreed that SPM had breached its statutory obligations and failed to provide a safe working environment. As a result of this prosecution, there have been a lot of changes at SPM including improvements to its supervision and training processes (which in this case were held by the courts to be defective), as well as modifications to machinery and other procedures. These are not outcomes that we had been able to achieve by other means.

Sadly, towards the end of the prosecution process the media reported yet another accident on a saw at SPM's Awarua plant involving serious injury to a worker. This time, the regulator has taken prosecution action. We understand that SPM is defending the prosecution. We will be following the proceedings with interest. 

**DARYL CARRAN** is president of the Otago Southland branch of the New Zealand Meat Workers Union.