

This month, we cover two cases where the actions taken during a WorkSafe investigation appear to have led to vastly different outcomes. In the first case, two company officers had terms of imprisonment imposed after they deliberately misled WorkSafe investigators. In the second case, WorkSafe announced it will not prosecute after five workers were badly burned, and acknowledged the cooperation of the company during the investigation and the improvements made after the incident. We also have an article on a machine guarding prosecution that again highlights the importance of getting expert advice when a machine is modified. Lastly, we report on the record fine given to a Telco under the Fair Trading Act and alert farmers to new guidance about how to minimise the risk of harm while handling cattle.

Loss of worker's hand on modified machine leads to Court sanctions of \$351,500

A [Christchurch pallet manufacturing company](#) has been ordered to pay a fine of \$283,500, Court costs of \$7,500, emotional harm reparations of \$50,000 and consequential losses of \$10,000 after a worker lost his hand on an inadequately guarded rise and fall saw.

A [rise and fall saw](#) has a circular cutting blade that ascends to cut wood at a desired length and then descends again. Lengths of timber are fed into the side of the saw.

In February 2019, the victim was trimming 20 millimetres off some small boards. The saw was not set up to cut the smaller boards, and the victim was clearing debris away from the right side of the saw with his right hand while stacking the cut pieces with his left hand at the same time. He was reaching through the guarded danger area to clear the debris instead of using a pressurised air hose which he had been trained to use to clear the debris.

As he stacked some cut pieces, he activated the foot pedal which initiated the cutting action of the saw blade. His right hand was still in the danger area and the saw blade cut completely through his wrist, severing his hand. Fortunately, his hand was successfully reattached although he has not regained full function.

The saw was purchased by the company in 2014, and when purchased the company was told by the supplier that it lacked appropriate guarding. The supplier left information on safety requirements with the company. The company

then engaged an engineering company to modify the saw, including fitting a new guard. The saw was also modified so that it could be operated from both sides - not just the left as the manufacturer had intended. The victim's injury was sustained when he was operating the saw from the right side.

The judge found that the company did not seek or obtain assistance from an appropriately qualified person or organisation when it made the modification, meaning there was no guidance as to whether the modification met industry standards. WorkSafe's investigation identified that the guarding and safety features on the saw did not comply with its standards and guidance. For example, the foot pedal should have been covered to prevent accidental operation and the tunnel guards were too short and the openings too large to sufficiently restrict operator access to the saw blade.

Interestingly, the company raised with the Court the fact that a WorkSafe inspector, who had visited the site, failed to notice deficiencies in the saw. However, the Judge said the company had knowledge that WorkSafe lacked and knew the saw had been labelled non-compliant; and noted again that it had undergone modification without expert professional advice. More information on advice from appropriately qualified persons can be found in WorkSafe's [Safe Use of Machinery Guidelines](#).

New guidance on safety when handling cattle on the farm



"That there's one bowlegged cowboy."

Handling large animals in agriculture is a high risk activity. Over the past two years, two [fatalities](#) in the agricultural sector were related to an incident involving an animal. Cattle handling is the second most common cause of workplace death on farms in [Victoria, Australia](#).

WorkSafe Victoria has recently published new [guidance](#) about safer cattle handling. It includes useful information on designing cattle yards and cattle behaviour basics - as well as more standard advice on general cattle handling and yard maintenance. WorkSafe NZ has also published a safe cattle handling [fact sheet](#).

Prison for men who mislead WorkSafe during investigation

Two men have been [sentenced](#) to jail terms for deliberately misleading WorkSafe inspectors during an investigation into a worker's exposure to a hazardous substance while he was cleaning the engine room of a ship.

As reported in the [May issue](#) of *The Safe Side*, WorkSafe originally investigated the 2019 incident after an apprentice sustained a serious anoxic brain injury due to toxic solvent exposure. WorkSafe were later informed that a key document about a previous incident had been destroyed and referred the matter to Police.

Police investigated the actions of the managing director and health and safety officer of the company, and charged one with perverting the course of justice and the other with

making a false statement. At sentencing last month, the men were sentenced to 20 months and 9 months imprisonment respectively.

Unsurprisingly, WorkSafe commented after the sentencing that businesses and organisations should focus on preventing harm instead of covering it up.

Vero Liability's [Statutory Liability](#) insurance policy covers access to expert legal advice to assist the Insured through a WorkSafe investigation. Insured should contact their broker as soon as possible after a serious workplace incident to obtain appropriate guidance on how to respond during a WorkSafe investigation.

Worker and company escape prosecution after gas explosion injures five

On the morning of 26 August 2022, workers arrived at a construction site in Wynyard Quarter in Central Auckland. When they opened a shipping container, they could smell gas. One of the workers joked about igniting his lighter. When he did, the gas caught fire and exploded. Five workers, including the man who lit his lighter, were badly burned.

A WorkSafe [investigation](#) found that a barbecue gas bottle had been mistakenly left running in the shipping container overnight and the gas had accumulated prior to the ignition.

WorkSafe took enforcement measures against a sub-contractor in the immediate aftermath of the explosion, after identifying issues related to gas bottle storage and worker training. Although it is unknown what those specific enforcement measures were, they were highly likely to be improvement notices. The sub-contractor also further strengthened its safety management system by introducing a barbecue permit procedure and prohibiting the storage of gas cylinders or gas bottles inside shipping containers.

WorkSafe has recently announced it will not take any further action against the company and acknowledged the company's ongoing support to the injured workers as well as their cooperation throughout the investigation. WorkSafe also said it will take no enforcement action against the worker who ignited the gas describing the event as a "prank" gone wrong. They said the worker "... deeply regrets his actions and has participated in restorative justice with the other victims."

WorkSafe's Energy Safety team highlighted that the incident is a reminder of the risks that exist with gas and the consequences that can follow. "If you smell gas anywhere, take it seriously. In some of the most significant gas-related events that have come to the attention of Energy Safety in the last few years, people have smelled gas but may not have recognised it as a warning sign." Further information on responding to gas leaks can be found [here](#).

Commerce Commission prosecution results in record \$3.675 million fine for NZ Telco

A [record fine](#) of \$3.675 million has been handed down to a large New Zealand telecommunications company under the Fair Trading Act. The Commerce Commission (the Commission) took the prosecution after the Telco misled consumers in the marketing for its broadband service.

The company was originally fined \$2.25 million by the District Court in April last year. The Commission then appealed, arguing that the sentence was 'manifestly inadequate' and did not appropriately reflect the seriousness of the offending, and 'the size and financial resources of the business.' The High Court agreed and allowed the Commission's appeal against the original fine imposed by the District Court. It said a greater uplift was required in order to ensure the penalty 'stings' and serves as a deterrent.

Under section 11 of the Fair Trading Act, no person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services. Both the District Court and the High Court found that the Telco's naming and marketing of its product as "FibreX" was liable to mislead the public into thinking "FibreX" was a fibre-to-the-home service, when it was not.

The Commission said that the judgment is a significant win for Kiwi consumers – because every New Zealander should be able to trust what businesses are saying in their marketing and promotion of their services. It went on to say: "The Fair Trading Act requires claims to be truthful and accurate in order to give you the information you need to make an informed purchasing decision."

This newsletter is published as part of Vero Liability's commitment to supporting better work health and safety outcomes for all New Zealanders. We want everyone to go home safe.

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