

Happy New Year from the VL health and safety team! In our first issue of the Safe Side for 2022, we look at two overseas prosecutions that resulted from failures in the safe handling of cattle. We also have articles on a recent methyl bromide exposure prosecution, an enforceable undertaking that was accepted by WorkSafe after a worker had his leg amputated in road working machinery and a summary of guidance for using bouncy castles after the horrific incident in Tasmania. Finally, we also look at how WorkSafe has been responding to deliberate and serious breaches of COVID-19 Orders and the new risk assessment tool for worker vaccination launched by Government.

WorkSafe takes enforcement action against businesses for COVID-19 related breaches

WorkSafe has been flexing its enforcement muscles when it finds repeated and deliberate breaches of COVID-19 Protection Framework requirements.

In late December, the health and safety regulator issued an infringement notice to a [martial arts and fitness centre](#) in Auckland for knowingly allowing unvaccinated staff to carry out work. The infringement notice carries a significant fee of \$12,000. The gym had continued to operate in breach of the COVID-19 Protection Framework rules and made their stance known on social media and in comments to media organisations.

WorkSafe also issued three infringement notices to a [restaurant](#) for breaching multiple COVID-19 requirements. These included failing to display signage signalling whether the business required the use of "My Vaccine Pass" in a

prominent place, failing to display a QR Code in a prominent place and not having systems or processes in place to check the "My Vaccine Pass" status of patrons. The combined infringement notice fees totalled \$20,000.

WorkSafe commented that: "When a concern is raised with WorkSafe we first look to talk to the business and check what they're doing and if their practices are correct. If there's a gap in their understanding, we work with them to fix it and that's normally the end of the matter. It takes a sustained period of observed non-compliance for us to escalate...".

There is extensive [guidance](#) available for businesses on their legal obligations under the "traffic light" COVID-19 Protection Framework.

Two prosecutions for stock handling failures highlight safety risks when working with cattle

Two recent overseas prosecutions underscore the importance of managing risks of workers being harmed when handling stock.

A livestock market partnership in the UK was fined £16,000 and ordered to pay costs of £5,685 after a drover was attacked by the bull he was trying to secure in a pen. He suffered a serious laceration to his leg.

The bull involved in the incident had been identified as fractious and potentially aggressive and was being moved approximately 40 metres to get to designated isolation pens for difficult cattle.

The [UK HSE](#) found that the cattle handling activities had not been adequately risk assessed and the system of work for moving cattle was unsafe. The risk of a drover being injured by a bull, especially one potentially agitated by travel and unfamiliar surroundings, should have been eliminated by segregating staff from the livestock. Steps taken following the incident allowed fractious bulls to be penned immediately after they were booked in at the cattle crush, avoiding any possible contact with droving staff.

Closer to home, a meat processing company in Melbourne was [fined](#) \$400,000 following the death of a stockman in December 2017. The victim was working alone drafting

and weighing cattle in an enclosed yard. He was found deceased following a suspected attack.

WorkSafe Victoria commented that: "This incident is a tragic example of the dangers faced by those working in agriculture and why employers and workers always need to be thinking about safety first."

Being crushed or trampled by cattle was the second most common cause of deaths on Victorian farms.

Information on safe handling of cattle is available from both [WorkSafe Victoria](#) and [WorkSafe New Zealand](#).



"The ringing in your ears – I think I can help."

EU accepted after worker had leg amputated in road working machinery

Enforceable Undertakings (EUs) are generally used as an alternative to continuing a prosecution. Instead, the charges are withdrawn by WorkSafe and the alleged defendant agrees to spend the money it would otherwise have spent on a fine and costs in ways that will benefit workers, industry and society.

[Four](#) EUs were accepted by WorkSafe during 2021. In the most recent example, a civil engineering and transport infrastructure pavement recycling company agreed to spend \$360,000 on its [EU](#) after an incident which resulted in a worker having his leg amputated above the knee.

The worker was trying to clean the stabilizer machine by dislodging material that had built up on the guarding hood with his foot. He missed the debris and his foot entered a void where it was caught in a slowly rotating axle.

WorkSafe alleged the machine was inadequately guarded and there should have been an isolation system so the rotating axle could be manually rotated when cleaning. It also alleged there should have been a safe system of work for inspection and cleaning of the machine.

As part of the EU, the company paid over \$107,000 to the injured worker including \$80,000 as a compensatory payment. In addition, it developed and implemented an extensive internal plant training and competency assessment programme for its workers, it will undertake an industry improvement initiative and it has made donations of \$30,000 to community groups.

You can read more about Enforceable Undertakings in [Issue 22](#) of *The Safe Side*.

Bouncy castle safety standards need to be followed to keep children safe

Playing on bouncy castles is a favourite activity for children but the recent tragedy in Tasmania has highlighted the risks of injury and death that can arise while using them.

Suppliers, operators and hirers of bouncy castles or "Land-Borne Inflatable Devices" (LBIs) are covered by the Health and Safety at Work Act. [WorkSafe](#) says the PCBUs must show how the LBIs comply with the Australian Standard AS 3533 which sets out detailed safety requirements.

As well as anchoring, tethering and safe use in windy conditions, AS 3533 covers manufacturer requirements including structural integrity and stability; access and egress; and safety from falling. It also covers operational requirements like supervision, maximum numbers and weights of users, and safe electrical and air supply.

WorkSafe has published a bulletin on LBIs that provides more [information](#).

Business fined after workers exposed to methyl bromide

A [pest control fumigation service](#) has been fined \$250,000 after its workers suffered poisoning due to ongoing exposure to methyl bromide. The WorkSafe investigation found that there were problems with the use of respiratory protective equipment (RPE) by workers. For example, workers were using Vaseline to help seal the mask with their face. Instead, WorkSafe says, workers should be clean shaven. Some workers were not using RPE at all.

WorkSafe's investigation also found that no staff had been adequately trained to clean and maintain their RPE. In

addition, there was no coherent system in place that monitored worker exposure to toxic fumigants.

The prosecution follows a trend of WorkSafe investigating health hazards – not just safety hazards. In [Issue 25](#), we reported on a prosecution for dust exposure. In [Issue 27](#), we reported on another prosecution for chemical exposure.

Information on the use of RPE including a respirator selection tool can be found on the [WorkSafe](#) website.

Government launches new COVID-19 vaccination assessment tool for businesses

The Government has launched a [vaccination assessment tool](#) under a new COVID-19 [regulation](#). The tool provides a clear, legal framework to help businesses make decisions about vaccinations in the workplace.

The tool does not override risk assessments already undertaken using the earlier WorkSafe guidance which we covered in [Issue 28](#). Businesses can also choose an alternative method that they consider fit-for-purpose for their business.

The tool considers four factors to assess the risk to a worker in a particular role:

- Does the worker work in an indoor space that is less than 100m²?

- Is it unreasonable for the worker to maintain 1 metre physical distancing from other people?
- Is the worker in close proximity to any other person for more than 15 minutes?
- Does the worker provide services to people who are vulnerable to COVID-19?

A business will need to answer "yes" to at least three factors before it would be reasonable to require vaccination of workers who carry out that work.

If a worker doesn't want to be vaccinated, but the tool indicates it is reasonable to require vaccination, then businesses must comply with employment law obligations.