

Vero Liability's [Statutory Liability insurance](#) is not just about cover for health and safety matters, it also responds to unexpected and unintentional breaches of a wide range of laws that may result in the prosecution of a business. In this issue, we take a look at some recent examples of other statutory prosecutions under the Fair Trading Act, the Resource Management Act and somewhat unusually, the Biosecurity Act. We also cover a health and safety prosecution for the death of a worker while using an organic solvent adhesive and provide some facts, figures and links to guidance about managing the increasingly topical issue of workplace stress.

The increasing costs of workplace stress

Workplace stress can affect all workplaces and all workers – from farm to office. It can result in lost productivity, increased absenteeism, and a greater risk of accidents and injury. It can also seriously affect the physical and emotional health of workers.

Stress, depression or anxiety accounted for the more than half of [working days lost](#) due to work-related ill health in the UK in 2019/20. Out of the 32.5 million days workers took off work for ill health, 17.9 million days were due to mental health related reasons.

In New Zealand, research by [Farmstrong](#) and ACC found that of 500 farmers contacted after a physical injury at work, 58% reported that “diminished wellbeing” was a contributor to their injury and 24% reported it was a major contributor. As the research report noted, farmers deal with injury risks all the time, but diminished wellbeing results in farmers doing something they wouldn't normally do or failing to avoid a risky situation that they would normally have successfully avoided.

The aspects of diminished wellbeing that were most frequently mentioned were having too much to do and not enough time (11%), feeling fatigued or exhausted (8%), lack of sleep or poor quality sleep (6%) and the challenges of coping with the ups and downs of farming (5%).

[WorkSafe](#) describes a number of control measures that PCBUs can take to minimise the likelihood of work-related stress resulting in harm. These include:

- Setting achievable demands for workers in relation to agreed hours of work
- Matching a worker's skills and abilities to job demands
- Supporting workers to have a level of control over their pace of work

- Involving workers in decisions that may impact their health and safety, and having processes to enable workers to raise issues and concerns they might have
- Ensuring managers and supervisors have the capability and knowledge to identify, understand and support workers who may be feeling stressed
- Having agreed policies and procedures to prevent or resolve unacceptable behaviour.

Some PCBUs may also be in a position to provide workers with access to independent counselling services.

There is a wealth of information about how to manage workplace stress. [Employment New Zealand](#) has information with an employment relations focus. The UK [Health and Safety Executive](#) has extensive guidance, toolboxes and programmes about managing stress from a health and safety perspective.



\$30,000 fine for biosecurity breaches

A man who opened imported sea containers at a private address instead of an approved transitional facility, and then falsified documents that he provided to MPI investigators, has been [fined](#) \$30,000. MPI noted that

imported sea containers can carry unwanted and highly destructive pests and diseases and must be opened at approved transitional facilities to ensure any biosecurity risk is addressed.

Worker death while using organic solvent leads to prosecution of a carpet company

Hazards and risks arise from many sources in the workplace and the potential harm that can result from chemical hazards should not be overlooked.

In March 2019, a worker from a West Coast carpet company was installing carpet using an organic solvent adhesive. He was found unresponsive by a co-worker and died three days later in hospital.

The WorkSafe investigation found that the company had not undertaken a risk assessment and had no safe system of work for working with the adhesive – particularly in relation

to ventilation and the use of fans. Neither did it provide effective information, training and instruction for its workers.

The victim had 17 years of experience and WorkSafe commented that: “The company largely relied on the experience of its workers to protect themselves from the effects of the adhesive, and that approach was simply unacceptable.”

At sentencing, the company was fined \$60,000 and ordered to pay reparations of \$105,000 to the victim’s family.

Fines of almost \$200,000 imposed for a litany of effluent failures across three farms

Unlawful discharge of dairy effluent has led to significant [fines](#) for a large dairy company, its director and an effluent pumping company.

Waikato Regional Council staff inspected a farm in Taupo in November 2019 and found effluent ponding and over-irrigation. An abatement notice was issued to the company requiring it to cease any further unlawful discharges of effluent.

However, further discharges resulting in ponding were found in a follow up visit. The company was convicted of discharging contaminant into the environment and contravening an abatement notice and fined a total of \$101,250.

The director of the company was also a director and shareholder of another company which owned two adjacent dairy farms. He was also employed as the general manager. Two inspections of one of these farms found ongoing issues with effluent management including it flowing into a sink hole in the ground. The director was convicted and fined \$35,000 for this offence.

An inspection of the second farm a few days later found overflowing effluent sumps at two stock underpasses and dairy shed effluent irrigation causing significant ponding over large areas. The director was further convicted for these unlawful discharges and was fined \$28,000.

A third company carrying out contracted effluent pumping was also observed working at the farm during an inspection visit. The Council staff found the company had overapplied effluent causing significant ponding and run-off. This company was fined \$30,000.

Waikato Regional Council commented that: “We look to larger farm operations and professional spreading companies to lead the industry and set examples of best practise. Clearly, this is not the case here. It is fair to say that both the regulator and the wider dairy industry are very disappointed with the breaches uncovered across this substantial farming enterprise.”

Product safety prosecutions for companies selling unsafe toys

The Commerce Commission (ComCom) has [prosecuted](#) two companies and warned a third following unannounced visits to stores selling toys for children aged under 36 months.

An Otahuhu retailer was fined \$48,000 for supplying toys from which various small pieces came free – including bits of plastic. The small parts were a choking hazard. Four of the five toys were battery operated and batteries either became accessible following drop testing, or the battery compartment could be accessed without a tool.

A South Island retailer that sold duck toys was also prosecuted. During testing, a squeaker came free from the ducks and presented a choking hazard for small children. The company was fined \$39,000.

A third company was issued with a warning. This company has ceased trading.

The prosecution follows similar [convictions](#) in 2019 for three companies selling unsafe toys and the resulting combined fines of \$150,000.

ComCom commented that: “These latest enforcement actions show the impact of our ongoing programme of unannounced visits to retailers.... Businesses supplying such toys must know the requirements the law puts on them and they must comply with those requirements, or they risk prosecution and significant penalties.”

Information on mandatory product safety standards can be found [here](#). As well as toys, the standards cover pedal bicycles, baby walkers, children’s nightwear, cots and cigarette lighters.