

This month, we look at two prosecutions arising from the failure to adequately manage machinery hazards, and highlight WorkSafe's warning that it is increasing its focus and enforcement activity in this area. In addition, we have articles on a private prosecution under the Health and Safety at Work Act (HASWA) brought by the father of an injured teenager, a huge fine imposed after the death of a custody officer in the UK, and an unusual case from Australia that arose from the failure to manage the risks of taxidermy. Finally, we cover a prosecution by the ComCom for selling dangerous magnetic toys.

Prosecutions highlight the duty to ensure machinery is both safe to use and used safely

Two recent prosecutions again highlight the need to ensure that workers remain safe, so far as reasonably practicable, when using machinery.

In the first case, [a meat works company](#) was sentenced in the Hastings District Court to a fine of \$280,000 and reparations of \$48,000 after a 17-year-old sustained significant hand injuries.

The victim was two weeks into the job and was trained to use a lamb brisket cutter machine by a co-worker who had started on the same day as him. The co-worker demonstrated how to use the machine with one hand. When the victim followed this method, his right hand was struck by the brisket cutter blades. This partially amputated his thumb, index finger, middle finger and ring finger.

Supervisors, senior management, and the company owners were unaware of the brisket cutter being used single-handedly and, until this incident, did not believe it could be used in such a way.

The matter went to trial in December 2022 and the company was subsequently found guilty of health and safety failures. The Judge noted in his decision that "training was completely inadequate and... positively dangerous."

The case underscores the need for businesses to ensure that their training for new workers is comprehensive and structured, and that work practices do not "drift" into unsafe methods. This is especially important where

engineering controls such as guarding cannot be used on a machine.

In the second case, a multinational company was sentenced to a fine of \$180,000 and further reparations of \$10,000 after a worker's arm got caught in a bark-stripping machine which did not have the appropriate safeguards in place for use in New Zealand.

The incident occurred in June 2021 when a worker was troubleshooting on the debarking machine. The rollers closed and trapped his wrist. He required surgery for a broken arm and a dislocated wrist.

The investigation found that significant safety modifications were made to the debarker machine before it was put into use. But the company did not ensure the machine met New Zealand safeguarding standards. Nor did it bring in a qualified expert to assess the adequacy of the safeguarding of the machine.

After the sentencing, WorkSafe reminded those bringing new machinery into the country to do their due diligence to bring the equipment into line with New Zealand safety standards and to get the right experts and advice.

Machinery is a common cause of injury in the workplace. WorkSafe says about 80% of acute work-related injuries involve machinery and equipment. Notably, it warns that protecting people from machines is a priority, and that it is increasing its focus and enforcement activity in this area.

Recent private prosecution illustrates additional exposure for businesses after incidents

When an injury occurs at work, businesses are usually focussed on a potential WorkSafe investigation, and the possibility of the regulator filing charges. But HASWA also allows for others to file charges by taking a [private prosecution](#).

Stuff reports that a teenager's father did exactly this after his son's eye was seriously injured by a slingshot during a school boarding house team building activity. A three-person slingshot broke hitting the boy's face, along with a tennis ball.

WorkSafe looked into the February 2, 2019 incident and closed the file less than three weeks later. The boy's father, unhappy with this decision, then took a private prosecution

against the events company running the day.

The case was heard in the Manukau District Court in December 2022. In a recently released decision, the Judge found that the events company had failed in its obligation to be proactive in seeking out and addressing risks. The Judge also found the company failed to identify that slingshots could break and that there was a cheap, effective step available to avoid a serious injury - by providing eye protection.

VL's [Statutory Liability policy](#) provides cover for private prosecutions brought under HASWA in the same way as those prosecutions brought by the regulator, with some modifications on excess.

Museum worker prosecuted for failing to manage taxidermy hazards

A health, safety and risk manager employed by a museum in South Brisbane, Queensland, has been [sentenced](#) for failing to comply with the State's Work Health and Safety Act. Although the prosecution occurred in Australia, the case also illustrates the similarly broad reach of our health and safety legislation.

The unusual prosecution arose after a worker at the museum was diagnosed with a spinal abscess resulting from chronic Q fever. The museum workers prepared dead animals for exhibit including through taxidermy and collecting carcasses from roadkill or animal care facilities. This created the risk of exposure to animals that may have carried the Q fever virus.

From at least 2015, the manager was aware of the risk of Q fever to staff carrying out taxidermy work and exchanged communications with an Inspector about the controls available to manage the risk. The manager began a risk assessment but didn't finalise it. No controls were implemented.

At sentencing, the manager did not have a conviction recorded although she had to pay a good behaviour bond of \$1,500 and over \$1,000 in costs. The Magistrate took

into account the manager's health and workload, and her genuine remorse and cooperation with the investigation. He also observed that the museum itself was undergoing an enforceable undertaking process, the acceptance of which would result in the museum not being required to enter a guilty plea.



ComCom prosecutes company for selling dangerous magnetic toys

The former owner of *GrabOne* has been fined \$87,750 for selling toys made up of small, high-powered magnetic balls, commonly known as buckyballs. The [prosecution](#) was brought by the Commerce Commission (ComCom) under the Fair Trading Act and followed other [prosecutions](#) by the regulator for selling unsafe toys.

The buckyballs were supplied between October 2020 and September 2021 in breach of an [unsafe goods notice](#) which bans the supply of any magnets, sold in sets of two or more, that are a particular size and strength.

The ban on these types of magnets is in place because if more than one of the magnets are swallowed, they can attract to each other within the body which is extremely

dangerous. At least one child in New Zealand did swallow two of the magnets from one of the magnetic toys supplied, and significant surgery was required to remove them.

The company sold 213 of the magnetic toys between October 2020 and September 2021. After being contacted by ComCom, it recalled the sets and contacted customers to notify them of the recall.

ComCom says that product safety is a priority area, and it is committed to ensuring that businesses comply with their product safety obligations. Further information on the [product safety standards](#) and [unsafe goods notices](#) is on the ComCom website.

UK security firm pays almost £2.7 million after the death of custody officer

The death of a 54-year-old grandmother who was working as a custody officer in a UK Court has resulted in a staggering £2.25 million fine for her employer under [health and safety legislation](#). The company was also ordered to pay an additional £433,596.07 in costs.

The victim died after she was kicked twice, once in the body and once in the head, during the restraint of a prisoner in custody. She died from brain injuries caused by the second blow.

The investigation by the Health and Safety Executive (HSE) found multiple failures including that there was a continued

failure to assess risks of violence and aggression, communicate safety critical information, adequately staff court activities and manage working hours.

Time pressures, staffing levels and business priorities led to routine violations of procedures by staff in order to get the job done and these violations went unchallenged. This was despite such failings being brought to the company's attention by HM Prisons Inspectorate, Ministry of Justice, HSE Inspectors and the company's own staff.

The HSE commented after sentencing that it appeared the defendant had failed to learn from its mistakes.

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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