

SAFEGUARD

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Tough talk on farm safety

Accusations that the *Department of Labour* is too soft on farmers who breach the HSE Act have been refuted by the department's acting chief advisor, safe and healthy workplaces, **Bob Hill**.

Although the agricultural sector has one of the highest death tolls of any industry group, employers from the sector have faced relatively few prosecutions in recent years (see *Farm safety - the statistics* below). As a result, some health and safety practitioners are questioning the department's approach to matters of farm safety.

Gisborne-based OHS consultant **Jarred Moroney** told *Update* that, in his opinion, many farmers did not meet their obligations under the act, and the DoL needed to take a hard line to reduce the industry's high toll of death and injury.

"Farmers need to be more accountable for their actions, and for this to happen the department needs to use the legislation as it has been written," he says.

According to Hill, however, farmers get no special treatment in regard to prosecutions.

"When it comes to workplace death, injury, or disease, we apply the same criteria when we investigate, regardless of where the incident took place – on a farm, a construction site, a forest, or in an office building," he says. "We'll prosecute where it becomes evident that employers have disregarded the provisions of the act."

Last month, Hill says, charges were laid against two companies in relation to a fatal trench collapse that occurred during repairs to a farm irrigation pipe.

Prosecution is not the department's immediate response to an accident, however, he says.

"We look at each case to establish whether incidents are workplace-related, where responsibilities lie, and what interventions will be most effective in preventing a recurrence of harm.

"When a self-employed farmer is killed, for example, there is often no point in initiating court action against their estate. The farmer's family are already grieving. Finding ways to tell the story of how such a tragedy could be prevented from occurring again serves a much stronger purpose."

For Hawke's Bay OHS consultant **Gordon Anderson**, however, it is the high human cost of farming accidents that convinces him the department needs to toughen its stance.

"DoL statistics put the farm death toll at 20 a year," he says. "That means 280 farming families have lost a father, mother, brother or sister since 1992 - or, to put it another way, it's the equivalent of 18 or 19 rugby teams.

"On top of that FarmSafe [a free safety training programme jointly run by ACC and Federated Farmers], says there are 11 serious harm accidents to farmers every day.

"At more than 4000 a year, that's something to be worried about – and I know of many serious harm accidents that aren't reported to the DoL."

Anderson says the free safety resources and training provided by FarmSafe and the Department of Labour mean that farmers who breach the act cannot claim ignorance of their legal obligations.

"ACC spent half a million producing a series of CDs for free distribution to farmers, there is a large range of free videos, and a huge source of information on both the ACC and DoL websites.

"No one can say they don't know where to find the information."

He is frustrated, however, at what he deems the DoL's "softly softly approach" to the industry.

"They are acting as trainers and consultants instead of getting on and applying the HSE Act."

Hill says that while the department is concerned about the number of deaths and serious injuries in the sector, the nature of the work is partly to blame for the high incidence of harm.

"Farmers often work in an open, uncontrolled environment. They do physical work and are exposed to natural hazards. Our approach is to engage with the sector at multiple levels. We are always trying to raise people's awareness of hazards and explain how individuals can monitor and manage them to prevent injuries and work-related disease.

"Informing and educating are often the most effective ways of getting those messages through

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and developing people's understanding."

Moroney, who counts 20 farmers among his clients, says there are proactive people in agriculture, but the majority in the industry aren't meeting their legislative obligations.

"We hear a lot from farmers about the high cost of compliance, but many who complain don't comply."

In light of the continuing high death toll, he questions the value of FarmSafe's free training programme.

"Our other clients, in engineering, forestry and so on, have to pay for their training. Would it make farmers more accountable if the cost was out of their own pockets?"

It is time, he says, for major action to be taken to cut farm fatalities, and sees extra funding and more staff for the DoL as having an important role to play in this.

"Some farmers are big employers now – we have clients who employ 30 or more people, and one has 50 employees – so they need to get serious about what they are doing, or be held accountable if they don't."

According to Hill, however, current farm safety initiatives are already making "substantial" progress in raising industry awareness of health and safety issues.

"A lot more needs to be done to translate awareness into practice," he says. "This is an area of high priority for us and will continue to be for some time to come."

FARM SAFETY – THE STATISTICS

In the two years to January 2007 the *Department of Labour* recorded 44 work-related deaths in the agricultural sector.

In the same period there were nine deaths in forestry, two in mining, 15 in construction, and 45 in the large industrial and commercial sector.

All but nine of the agriculture sector deaths involved a vehicle. In 16 cases this was a tractor, with ATVs accounting for another six fatalities. Trucks, utes, motorcycles, a helicopter, a baler, and unspecified farm vehicles accounted for 13 fatal accidents, while the remaining deaths were due to being crushed by bulls, drowning, falling from height, or being struck by falling objects.

While no one has been prosecuted in relation to a farming fatality in the period since January 2005, *Update's* research indicates that there have been 28 prosecutions relating to 22 fatal incidents in the industrial/commercial sector, two in forestry relating to a single workplace death, one mining prosecution, and ten construction industry ones, relating to six fatalities, over this time.

A search of CourtBase, *Safeguard's* subscription database of HSE Act cases, shows there have been six prosecutions for farm-related fatalities since the act came into force in 1993. The first of these was in 1998, when a pig farmer was charged after a farm worker drowned in a slurry tank. The other prosecutions all occurred in 2003, when four parties

were convicted under various sections of the act following two fatalities involving inadequately guarded power take-off units on tractors, and a farm supervisor was charged after a fatal road accident involving a farm vehicle with a defective seat belt.

In the past two years non-fatal farming incidents have resulted in five prosecutions:

- s6 and s13(b) charges against two farm owners, following a chainsaw injury to a worker who was cutting timber for a retaining wall;
- a s25(3)(a) charge against a farmer owner who did not report an incident in which a worker's rib was broken when he was kicked by a cow;
- a s6 charge against the owner of a poorly maintained tractor that was involved in an accident;
- two s6 charges against a contracting company after an ATV rolled on a steep downhill track while clearing rocks from a vineyard.

In the same period one party has been prosecuted in relation to a non-fatal incident in the mining sector, 35 in construction, 38 in manufacturing, and five in forestry, including one forest worker who was fined \$300 after being struck by the tree he had felled.

ATV: ALL TERRAIN VIBRATIONS

An Otago University researcher has called for ATVs to be redesigned to reduce vibration, and for farmers to ride them less, after a study showed farmers who spend as little as an hour a day on them are subjected to harmful levels of vibration to the spine, likely to contribute to farmers' significant levels of lower back pain.

Dr *Stephan Milosavljevic*, from the university's School of Physiotherapy, with colleagues *Allan Carman* and *Poonam Pal*, fitted 30 Otago farmers and their quad bikes with accelerometers to measure vibration in all three planes: vertical, horizontal, and sideways.

They found vibration in the vertical plane at low frequencies of 2 to 12Hz to be particularly evident – the very type of vibration most harmful to the spine.

"We can say that in one hour of constant riding an ATV on a farm, the farmers approach the international ISO threshold levels for maximum acceptable levels of vibration," he says.

The body cannot absorb these low-frequency vibrations, causing the spine to shake and vibrate – not that this in itself will necessarily directly cause pain. Instead, the vibration may reduce the capacity of the spine for heavy lifting.

"So a farmer who has been vibrated and shaken around on his bike then struggles with a sheep and hurts his back. It's a wicked combination. Exposure to vibration, then being asked to lift a substantial physical load, is a recipe for disaster."

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Across the 30 subjects the average riding time per day was 97.5 minutes, with a minimum of 13.3 minutes and a maximum of 210.1 minutes. Average vibrational dose value was 23.1 m/s^{1.75}, above the maximum limit value of 21.

"The results," say the researchers, "indicate the need for redesign of the ATV to reduce exposures to vibrations."

Or as Milosavljevic puts it more succinctly, as an alternative: get off your bike and walk more.

"Walk to get your mail. Walk to get your paper. Walk to the woolshed. Walking does not cause any serious damage. In fact it is a healing activity. Your spine enjoys it."

HONESTY DOESN'T PAY

An admitted alcoholic employee's claim of unfair dismissal, which was the result of a positive breath test, has been upheld by the *Employment Relations Authority*.

Jason Palmer was employed by *Bluescope NZ Steel* as a crane operator in the company's slab-making plant. In September 2005, he voluntarily told his plant manager that he had an alcohol problem with which he needed help. Prior to this admission he had never displayed any performance or impairment problems.

After consultations involving the company doctor and two senior HR staff, it was decided to grant Palmer three months' unpaid leave to undertake a detoxification programme. An extensive two-year rehabilitation agreement was also drawn up, a central condition of which was ongoing random breath tests, with instant dismissal for a test failure. The agreement was signed by Palmer.

He returned to work in January 2006. The next month, after three negative breath tests, he failed a test. The reading was just above the pre-determined limit and Palmer said he had not consumed any alcohol. Later that day he failed a second breath test, but was not offered a blood test.

According to the ERA, two disciplinary meetings that were held seemed to focus on whether the agreement had been breached rather than on health and safety concerns. At each meeting Palmer protested his innocence, but his manager decided he had breached the agreement and could not be trusted to stop drinking. He was dismissed from his job.

On September 26 authority member *Dzintra King* found the initial agreement was unfair – especially as Palmer had voluntarily informed the company of his alcohol problem. If he had not done so, she said, the company would have been unknowingly employing a person with an alcohol problem which could, potentially, have been a more dangerous situation for all concerned.

However, by entering into the agreement, Palmer had been placed in a less advantageous position than other employees who might have an undisclosed alcohol problem. The agreement was effectively a "one strike and you're out" regime, she said, and was not reasonable or fair.

"Alcoholism is an illness and rehabilitation is difficult. It is more than likely that an alcohol-impaired employee who had not entered into an agreement like this would have received an employment warning for a first offence with a reading at the level of Mr Palmer's."

King also found little consideration had been given to Palmer's willingness to undergo random tests, to exploring other possible reasons for the positive reading, to the man's lack of performance issues, or to alternatives to dismissal.

As a result, she found the dismissal unjustified and ordered the parties involved to meet to resolve the issue of remedies. Costs were also reserved.

SMOKING ROOM BAN UPHeld

A recent High Court decision means that any employer who builds a special smoking room for use by staff will contravene the Smokefree Environments Act, even if the room is located away from the primary working space and is designed so that not a wisp of smoke escapes to be inhaled by non-smoking staff.

Progressive Meats Ltd, which created such a smoking room at its Hastings plant, argued that the primary purpose of the act was to reduce non-smokers' exposure to second-hand smoke, and that the room served this purpose.

While having some sympathy with this argument, and acknowledging that a significant portion of the company's staff are smokers, Justice *Baragwanath* supported the Ministry of Health's counter-argument: that the act's intention is to ban smoking in all workplaces, and that to find otherwise in this case – despite its special merits – would result in "wholesale creation of smoking rooms and openly contradict the strict controls (imposed by the act) on smoking in the workplace" (High Court Napier, September 28).

Progressive Meats has never allowed staff to smoke in the processing plant, but before 2002 workers were allowed to smoke during their breaks, either in the cafeteria or in the carpark outside. Since 2002, more stringent export hygiene requirements have required staff to begin each shift in

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laundered overalls and other clean equipment, and they may not leave a designated protective clothing area while kitted out. This has rendered smoking outside impracticable, as they would use up all their break time removing their kit and being issued with a new kit.

To get around this, the company consulted with staff and union and constructed a special smoking room as part of the protective clothing area, which met overseas hygiene requirements. Entrance to the room is via two sealed self-closing doors. Air is pumped from a positive-pressure cafeteria room into the smoking room, which is under negative pressure so no smoky air can get back into the cafeteria. Instead it is exhausted outside.

On appeal, the High Court had to decide if the smoking room fell within the definition of a workplace as set out in s2 of the Smokefree Environments Act 1990, and therefore infringed s5 of the act.

The Ministry of Health argued the room is a workplace because it is an internal common area used by more than one employee, used in conjunction with the core workplace in the same way as staff use the cafeteria and washrooms during breaks. The ministry also argued that the handful of workplace exceptions set out in the act is specific and exhaustive and leaves no scope for smoking rooms beyond institutions such as hospitals and rest homes.

Progressive Meats argued that these legislated exceptions allowed non-smoking employees to be exposed to second-hand smoke, while its smoking room did not, and was therefore in keeping with the intent of the legislation.

Justice Baragwanath noted that Progressive's solution would be of benefit in workplaces in which a majority of staff smoke, but would nevertheless allow smoking "to a greater extent than Parliament's text has expressly permitted". It would be a step too far, he said, for the court to "read down" the act's text and assume that smoking rooms are not prohibited provided they are exclusively for the use of staff who smoke.

INDUCED VOLTAGE DEATH

A lineman in Scotland was electrocuted on a worksite where everyone knew things weren't being done properly, but no one intervened to stop the unsafe practices.

Scottish Power was fined £400,000 for breaching the Health and Safety at Work Act after an employee of subsidiary *SP Power Systems* died during corrosion monitoring work on overhead cables in Lanarkshire in December 2003 (Airdrie Sheriff Court, 30 August 2006).

The October edition of *The Safety & Health Practitioner* reports the man was working from a conductor trolley at a height of 85 feet, removing spacers from the power line. He was working on a decommissioned circuit, but one side of the installation was still live. Despite the danger of induced voltage – in which adjacent electrical structures pick up and transmit current – the drain earth devices which would have protected him had been dismantled, apparently as a short cut. Scottish Power had standard procedures for the use of drain earths, but they had not been properly explained to workers, nor had it checked that they were being followed.

The prosecuting HSE inspector said the most distressing aspect was that the dead man and his colleagues knew they were not following safe procedures.

"All the staff on the day knew things weren't being done properly, but not one of them spoke out, even when they knew the situation was becoming very, very dangerous."

LET'S BURY THE EVIDENCE

Two Aussies who adopted an unorthodox method to avoid the attentions of an OHS inspector – burying his photographic evidence – have ended up in court anyway, charged with assaulting the inspector and failing to comply with his directions.

The incident happened at the site of a drainage project in Mildura, Victoria, early last year, when an inspector from *WorkSafe Victoria* identified a number of safety issues: no system to manage traffic, no signs warning of excavation works, no fall protection around the edge of a trench where pipes were being laid, and workers in the excavation outside the protection of a trench-shield.

The inspector directed the men in the trench to get out, and work to cease until he had issued a report and prohibition notice. However some men returned to work and the inspector again asked them to stop. They ignored him so he began to take photographs of the site.

One man grabbed the inspector from behind and used force to restrain him, while another took his camera, removed the film, and threw it into the trench. The other man used an excavator to back-fill the excavation and cover the film.

In court last month, one of the men was fined \$6500 and the other put on a 12-month bond for violation of Victoria's Occupational Health and Safety Act.

TRAMPOLINE RISK MANAGEMENT

NZ Herald, February 7: A rise in the number of children injured using backyard trampolines prompts Starship Children's Hospital to call for tramps to be restricted to gymnastics clubs and places where children are supervised. *Press release, February 8:* The NZ Society of Physiotherapists says trampolines are good for children – provided certain guidelines are observed – because they build muscle strength and general fitness, help prevent obesity, and get children playing outside.

ROAD SAFETY AWARDS

Organisations which have carried out initiatives in 2006 to improve the safety of their staff while driving have until March 23 to enter the annual Road Safety Innovation and Achievement Awards. One of the six categories is specifically for organisational initiatives, with previous winners including the *Log Transport Safety Council*, *Excell Corporation*, and *Fonterra*.

Full info is at www.roadsafetyinnovationawards.org.nz

WORK SAFETY AWARDS

School is back in session and the holiday season is over, so now is a good time to allocate a couple of hours to putting together your entries for *Safeguard's* NZ Workplace Health and Safety Awards, for which entries also close on March 23. Help minimise workplace stress – yours and ours – by getting your entry in early. Full info at www.safeguard.co.nz or call *Annette Vao* on 09 360 3712. Also remember to book you and your team into the awards gala dinner in Auckland on May 1.