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Cost-free controls would have prevented German's injury

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An employer that over-relied on verbally instructing workers on the dangers of a frequently used machine has been convicted and fined for WHS breaches, after a "vulnerable" worker's leg was severely injured.

NSW District Court Judge Wendy Strathdee found EG Knight & Sons Pty Ltd did not discharge its duty to eliminate risks by making workers aware of them. She found that after the incident, the employer was able to instal guarding on the machine and eliminate the relevant risk at no cost.

In May 2017, a German backpacker engaged by EG as a farm labourer was using a mobile grain auger to fill a mobile stock feeder when he attempted to step over the auger's unguarded hopper intake area and lost his balance.

His left foot became entangled in the rotating screw flighting and he sustained lacerations, fractures, tendon damage and a degloving injury, requiring 11 weeks in hospital and multiple surgeries.

EG pleaded guilty to breaching sections [19\(1\)](#) and [32](#) of the State *Work Health and Safety Act 2011* in exposing workers to the risk of injury from unguarded machine parts.

Judge Strathdee heard that immediately after the incident, in response to a prohibition notice, the employer installed guarding on the grain auger, including some guards that were fabricated by workers from scrap material found around the farm.

She said this step, which "did not involve any cost, and was done relatively simply", eliminated the relevant risk.

Judge Strathdee heard that before the incident, the employer did not consider installing guards on the auger because its staff, including the injured worker, were made aware that the areas around the hopper intake were dangerous and to be avoided.

She heard there was no risk assessment, safe operating procedures or competency testing relating to operating the auger and workers learned how to use it through informal on-the-job training.

"Risks and accidents involving farming machinery are notorious" and in this case the risk was obvious and known to EG, Judge Strathdee said.

"Whilst the [employer] had made [the worker] aware of the danger of working in the area of the hopper intake... that does not discharge [its] duty to eliminate the risk.

"[The worker] was a foreign national undertaking work on a holiday visa, and to that extent he was a vulnerable worker. He had only been with [EG] for about one month before the incident occurred."

Judge Strathdee found EG's actions were "in clear contravention" of guidance material around guarding and operating grain augers, including: a [guarding provision](#) of the State WHS Regulation; the WHS Code of Practice [Managing the risks of plant in the workplace](#) ; the Australian Standard for machinery safety; SafeWork NSW's [Grain augers industry safety standard](#); and the University of Sydney's 2008 [guide to fitting a more practical guard](#).

"Any regard to the material would have immediately identified that operating the auger in the way that it was being operated would cause a risk to workers," she said.

She found an appropriate fine for EG was \$100,000, but reduced the amount to \$5,000 to reflect its guilty plea and "very limited" capacity to pay a fine due to the significant impacts of drought.

[SafeWork NSW v E G Knight & Sons Pty Ltd \[2019\] NSWDC 336 \(19 July 2019\)](#)

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