Risk Advice Guide

Operational Risks

Viticulture and Winery

FMG Advice & Insurance

Operational Risks

A key area of risk to businesses is operational risks. These are the risks around regulatory compliance and liability exposures related to operating a business. The following are a sample of some of the operational risks that you should consider addressing through both active risk management and insurance solutions.

Health & Safety

At the forefront of operational risks is the Health and Safety of not only yourselves but also your employees, contractors and visitors. With more than 90 deaths in the last five years, which is close to 40% of all workplace related deaths, and more than 16,600 ACC claims for injuries sustained within the agricultural industry broadly, a consideration and active involvement into Health and Safety matters within your business is critical to reducing the risk of injury or death and disruption to your business.

From 4 April 2016 Health and Safety requirements in the workplace are governed by the Health & Safety at Work Act 2015.

While implementing health and safety practices can feel like a daunting responsibility, it is one that now places more onus on managers, owner/operators, business directors and board members to enforce, and it's really a matter of good business practice to minimise downtime and get you home to your family, and your workers home safe at night.

Possible Solutions:

As a business operator, our best-practice advice is to have an active involvement in the following documented initiatives:

- Include staff in developing your Health and Safety plan and ensure that training and conversations about it are part of your regular catch-ups.
- Maintain an accident and incident register.
- Identify hazards and then eliminate, isolate or minimise them.
- Support all officers to get up to date with Health and Safety issues and key risk factors.
- Engage workers in Health and Safety matters that affect them.

More information and great resources can be found at
www.SaferFarms.co.nz
or on the WorkSafe website
www.business.govt.nz/worksafe.

The new Health and Safety legislation increases the risk of financial risks due to non-compliance. This is where insurance can help. A Statutory Liability insurance policy can cover you for prosecutions arising from unintentional and negligent conduct involving workplace accidents, and while you can't insure against the penalties imposed under this legislation, you can insure yourself for legal defence and any reparation costs awarded against you.

In addition to providing cover for compliance breaches under the Health and Safety at Work Act, the Statutory Liability cover also insures you for your liability if you're ordered to pay penalties following prosecutions for unintentional, negligent conduct in connection with your business under other various statutes including the Resource Management Act.

Some Liability policies provide a range of public liability covers for liability for third party property damage and third party bodily injury following an accident as well as a number of additional and optional benefit options. For example, there is an automatic additional benefit providing up to $1 million for levies costs and losses under the Forest and Rural Fires Act 1977. These policies may also include an option for cover for employer's liability for bodily injury not covered by ACC.

Similarly, managers, directors and officers face increased financial risk because of the increased accountability now to be proactive about health and safety in the workplace as well as their other managerial exposures.
A Management Liability policy provides cover not only for managers, directors and officers but also the company and/or trust structure they operate under.

Use of Chemicals

If your property borders another that has other crops, plantations, waterways or is organic, extra care should be taken while you spray chemicals on your property. If the spraying activity damages your neighbour's crop, the legal and financial consequences could be significant.

Possible Solutions:

Before you engage someone to carry out spraying on your property, we strongly recommend you talk to your neighbours and advise them:

- When and where the spraying will take place.
- What chemicals will be used.
- How it will be sprayed.
- What will be done to prevent spray drift.

This information must be recorded in a spray diary. Maintaining a record of spray events is not only best practice, but also essential for defending a liability claim. Recording the weather conditions and any checks to ensure that conditions were appropriate for spray work to be done is recommended.

Also, choose times when your neighbours can either move stock (if possible) or when their crops are less sensitive. If your neighbours collect rainwater from their roof, you may need to ask them to disconnect their pipes when spraying occurs. We recommend that you give them reasonable notice of spraying.

Remember to also check with your regional council before spraying as some authorities have mandatory requirements for spraying set out in their Regional Plans, and allow for buffer zones for the area sprayed.

The Management of Agrichemicals Code of Practice NZS8409:2004 regulated by the Environmental Protection Authority (EPA) provides a standard for the safe and effective management of agrichemicals and demonstrates how you can meet the requirements set out in the Hazardous Substances and New Organisms Act 1996. This Code is intended for all agrichemical users involved in application, storage or supply of hazardous substances. It provides practical and specific guidance on how agrichemicals are to be handled and used. It also sets out the best practice to follow to minimise any adverse impacts on human, environmental and animal health.

Some policies may have a Spraying Liability extension which provides you with an option to cover your liability for spray drift if you are spraying others crops as a business venture.

Wine Legislation

All winemakers must operate under a Wine Standards Management Plan (WSMP) registered with MPI unless specifically exempted. Winemakers who have not registered a WSMP or been exempted may be subject to penalties (including a term of imprisonment) under the Wine Act 2003.

Under the WSMP, winemakers must identify, control, manage, eliminate or minimise hazards and other risk factors in relation to the making of wine to ensure it is fit for its intended purpose. The requirements for the WSMP are set out in the Wine Act 2003.

The WSMP is individually created by the winery to which it applies. Alternatively, you can adopt a WSMP created by another winery, but it must be amended to reflect the nature of your own business operations.

Wine cannot be exported unless it is made in a winery that has a WSMP and otherwise complied with the Wine Act 2003.

Possible Solutions:

Some Liability policies may respond to penalties awarded under the Wine Act 2003 provided that the offending conduct was unintentional and negligent.

Winemaker's Liability

It is also not uncommon for contamination and spoilage to occur as a result of staff error during the wine-making and fermentation process. It is important to give staff necessary training on all equipment and maintain documented processes.

Possible Solutions:

If you are processing grapes owned by other parties you should check that you are covered under the Winemaker's Processing Liability Optional Benefit under your Liability Policy. This provides cover for accidental loss to wine products owned by others caused by your wine making process. Additionally consideration should be given to cover for other people's grape or wine products in your care under the Bailee's Liability Optional Benefit and additional cover for accidental loss and damage to others property from chemical spray drift.

Business Interruption

Damage and loss to buildings and contents can have a significant impact to your business not only in regards to the loss itself but also in terms of interrupting your business operations.

Claims for business interruption following physical damage to insured assets include:

- Fire, explosions and lightning.
- Weather damage from wind, rain, hail and snow.
- Impact by vehicles.

Possible Solutions:

In the event of significant loss to your buildings or contents that leads to interruption of your business operations you could be covered for your loss of profits, additional increased costs of working, and/or other financial losses or costs, resulting from the interruption of, or interference to your operations through a Business Interruption insurance policy.

An important element of Business Interruption insurance is establishing a sufficient indemnity period.

The indemnity period should reflect the realistic period of time required to repair or replace your damaged buildings and/or other items in order for you to resume normal operations. The indemnity period should reflect the time required to return your business operation to the level it was generating income immediately before the loss occurred.

Recent catastrophic events show an indemnity period of no less than 12 months is prudent, and in many cases even longer may be necessary in determining the level of financial loss that could affect you in any business interruption, you need to consider at least the following factors to get a full understanding of the possible "total cost" of loss.

- Physical damage (e.g. the costs of loss and damage to your growing structures).
- Expenses that will remain regardless of level of business activity (e.g. interest on borrowings, rent, wages, rates and insurance).
- Expenses that may be temporarily reduced (e.g. power and water).
- Supply chain costs (e.g. access to credit terms and foreign exchange rate contracts).

Please note that Business Interruption insurance is not a complete solution to the risks associated with businesses being interrupted and we recommend that policy holders adopt a wide ranging risk management assessment in this regard.

Export Risks

For many New Zealand winemakers, this is another key area to consider under your Operational Risks. While various specialty insurance solutions are available for export and trade risks, these exposures are often best controlled through your own risk management practices.

Two common insurable examples in this area are Trade Credit insurance, which essentially provides accounts receivable protection for you against a buyer default due to financial or political events. Another being Intellectual Property (IP) Rights insurance, which can help with legal costs incurred in enforcing your (IP) rights against infringement, or defending an action against you.

Decision making around whether to retain or transfer these risks through insurance often comes down to the cost involved or restricted terms of insurance coverage available.

Another issue to be aware of is the impact of exchange rates fluctuation. This exposure is uninsurable (as it is a business risk) and we recommend that you discuss this matter with your Bank.

Who is FMG?

FMG is New Zealand's number one rural risk advice and insurance specialist. We have been involved with rural New Zealand for over 100 years and we remain 100% committed to our clients – all those who live on the land, work on the land or support those who do.

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