



**NATIONAL REVIEW INTO MODEL OCCUPATIONAL HEALTH AND
SAFETY LAWS**

SUBMISSION

To

Chair, National Review into Model OHS Laws

Prepared by:-

Organisation: The Western Australian Farmers Federation (Inc)

President: Mr Mike Norton

**Address: Ground Floor
28 Thorogood Street
BURSWOOD WA 6100**

**Postal Address: PO Box 6291
EAST PERTH WA 6892**

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Background

The Western Australian Farmers Federation (Inc) (WAFarmers) is WA's largest and most influential rural lobby and service organisation.

WAFarmers represents approximately 3,500 Western Australian farmers from a range of primary industries including grain growers, meat and wool producers, horticulturalists, dairy farmers and beekeepers.

It is estimated that collectively our members are major contributors to the \$5.9 billion gross value of production (2005/06 – ABS, WA Agri-Food Industry Outlook – December 2007) that agriculture in its various forms contributes to Western Australia's economy.

Additionally, through differing forms of land tenure, our members own, control and capably manage many millions of hectares of the State's land mass and as such are responsible for maintaining the productive capacity and environmental well being of that land.

Introduction

WAFarmers welcomes the opportunity to provide comment on the Issues Paper *National Review into Model Occupational Health and Safety Laws*.

WAFarmers notes that the panel intends to hold further targeted consultations with stakeholders and would appreciate the opportunity of participating in this process.

Occupational Health and Safety on farm properties is a complex issue that requires more analysis than a written submission. The seasonal nature of agricultural industries, isolation, difficulty in accessing skilled farm labour and the workplace also being the family home are examples of the unique on-farm challenges from an OH&S perspective that cannot be addressed through a "one hat fits all" legislative and/or regulatory approach.

It is also worth pointing out that the timing of this review has coincided with the seeding of the 2008/09 grain crop across Western Australia and that the availability of WAFarmers elected representatives to contribute to the review has been extremely limited due to seeding commitments and challenging seasonal conditions in many areas of the State.

Chapter 1: Legislative Approach

WAFarmers believes that the proposed model OHS Act should be enabling legislation providing a framework for regulations that contain the flexibility required to recognise the unique challenges faced by farmers in their workplaces.



Chapter 2: Scope, Application & Definitions

WAFarmers believes that the proposed model OHS Act and regulations should incorporate agriculture specific provisions jointly developed by government and industry. Without the input of those whose livelihoods are reliant on food and commodity production within agriculture sectors, proposed legislation and/or regulations will not contain the practicalities needed to ensure effective governance of OH&S issues.

Chapter 3: Duties of Care – Who owes them and to whom?

WAFarmers accepts that farmers have a duty of care to their families, as an employer to their employees and contractors to their farms.

WAFarmers believes, however, that the duty of care should be a shared responsibility and that in particular, employees and others should be responsible for their own behaviour in the farm workplace and that persons not performing work i.e. visitors, members of the public should not be included in any proposed OH&S Act and regulations.

Chapter 4: “Reasonably Practicable” & Risk Management

As previously advised, OH&S in a farming environment is a complex matter that will not be managed through a “one hat fits all” approach. Accordingly, WAFarmers believes that the obligation to comply with a duty should at all times be subject to considerations of what is reasonably practicable.

Chapter 5: Consultation, Participation & Representation

WAFarmers believes that any proposed OH&S Act and regulations should provide for consultation between employers and workers as a means to address issues such as the previously highlighted shared duty of care responsibility.

In relation to right of entry, WAFarmers believes that a farmer should reserve the right to refuse right of entry to a farm property due to biosecurity risks which potentially can destroy a farm business.

Chapter 6: Regulator Functions, Powers & Accountability

The competence of inspectors is a major issue for WAFarmers in relation to agricultural industries, in that competence levels rarely match the regulatory powers that inspectors are bestowed with.

This once again highlights the unique nature of agricultural industries. Inspectors need to understand this situation and apply judgements based on the concept of “reasonably practicable” at all times.



Chapter 7: Compliance and Enforcement

WAFarmers believes that a graduated approach to enforcement of OH&S is appropriate.

Such an approach provides opportunities for discussions between the relevant parties and for the review of decisions of inspectors. These measures should be included within a legislative regime.

WAFarmers takes the view that improvement and prohibition notices can form part of the hierarchical approach (with appropriate rights of review) but that infringement notices have no part in the enforcement process.

In certain circumstances WAFarmers accepts that injunctive relief may be necessary. Also that the use of enforceable undertakings is desirable in any legislative regime.

Chapter 8: Prosecutions

WAFarmers accepts the need for, as a last resort in the enforcement pyramid, prosecutions, and accepts that such can assist in prevention and deterrence.

It is the view of WAFarmers that liability should be assessed on the criminal standard of beyond reasonable doubt and that such prosecutions should be heard and dealt with by legally qualified magistrates in a magistrate's court. The usual appeals process follows.

WAFarmers is also of the view that only inspectors, the regulator and the relevant Minister be authorised to commence proceedings relating to a prosecution. The rules of evidence appropriate to a magistrate's court should also apply as should the normal burden of proof, that the prosecution is required to make out the case and that all defences available to criminal proceedings be so available to the defendant.

In some special circumstances WAFarmers believes that it may be appropriate to prosecute particular "officers" of a company. An officer should be defined by reference to the Corporations Act.

WAFarmers do not believe that incarceration is an appropriate penalty nor that special enforcement processes, particular to OH & S judgements, is necessary.

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