

**The Pastoralists & Graziers Association of WA (Inc)**

**Submission on:**

**Standing Committee on Legislation**

**Inquiry into the Work Health and Safety Bill 2019**



**26 June 2020**

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## **Submission from Pastoralists & Graziers Association of WA on Inquiry into the Work Health and Safety Bill 2019 by the Standing Committee on Legislation**

The Pastoralists and Graziers Association of WA (PGA) greatly appreciates the opportunity to make a submission to the Standing Committee on Legislation for its Inquiry into the *Work Health and Safety Bill 2019*.

This opportunity is particularly important given that the WA government chose not to consult industry on the industrial manslaughter provisions which were introduced after completion of the consultations undertaken in 2018 on the publication *Modernizing work health and safety laws in Western Australia: Proposals for amendments to the model Work Health and Safety Bill for adoption in Western Australia*<sup>1</sup>.

This consultation document was the result of amendments to the national Model Work Health and Safety Bill recommended by the Ministerial Advisory Panel (MAP) on Work Health and Safety (WHS) Reform<sup>2</sup>. The PGA notes that industrial manslaughter was not included in the recommendations of the MAP.

That industrial manslaughter would be included in the *WHS Bill* was announced on 24 August 2019 at the WA Labor Conference, only three months before the Bill was tabled in parliament on 27 November 2019, thus preventing any opportunity for industry consultation or comment. The PGA is concerned that this very late inclusion was driven by internal politics of the ALP and not by the recommendations of MAP which were based on the considered perspectives of the government, industry and union membership of MAP.

The PGA, through membership of the Joint Industry Group, has previously expressed its strong concern and disappointment to the Premier at the failure of the WA Government to consult industry prior to the introduction of the proposed industrial manslaughter provisions.

In addition to this submission, the PGA is also a co-signatory to, and strongly supports, the submission to this Inquiry by the Joint Industry Group.

Specifically the PGA strongly supports the Joint Industry Group's Recommendation:

*That the proposed Industrial Manslaughter offences set out in sections 30A, 30B and 31 of the Bill be rejected in full, the current offences set out in the OSH Act be maintained, and the Government and WorkSafe engage with the business community in a collaborative dialogue regarding positive initiatives to improve safety and protect all workers.*

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<sup>1</sup> [https://www.commerce.wa.gov.au/sites/default/files/atoms/files/whs\\_act\\_consultation.pdf](https://www.commerce.wa.gov.au/sites/default/files/atoms/files/whs_act_consultation.pdf)

<sup>2</sup> <https://www.commerce.wa.gov.au/publications/archived-ministerial-advisory-panel-work-health-and-safety-reform>

## **The Pastoralists and Graziers Association of Western Australia (PGA)**

The PGA is a non-profit industry organisation established in 1907, which represents primary producers in both the pastoral and agricultural regions in Western Australia. Members include pastoral leaseholders and freehold farmers through the full spectrum of some of Australia's largest corporate pastoral groups to family-owned companies and trusts and individual landholders in Western Australia.

In terms of business structures, the majority of our members operate as small businesses where typically the majority of the labour is provided by business owners supplemented with a small number of employees.

The PGA's core and guiding principles are property rights, subsidiarity<sup>3</sup>, self-interest, self-reliance, rule of law, free markets, competition, lean<sup>4</sup>, small government and reduced regulations.

### **PGA Involvement in Improving Safety in Agriculture**

As one of the major agriculture peak bodies in Western Australia, the PGA has a long history of promoting safety in Agriculture, including being one of the founding members of FarmSafe WA Alliance in 1994, a long term member of the Agriculture Industry Safety Group (AISG) and an inaugural member of the Agriculture Working Group (AWG), a sub-committee of the Commission for Occupational Safety and Health (COSH), which was established in early 2018.

The AISG is a WorkSafe committee chaired by the WorkSafe WA Commissioner and whose membership includes a diverse range of agricultural industry organizations and government safety representatives.

The AWG was established in early 2018 on the request of Minister Johnston to oversee the development and implementation of a Safety Campaign specially addressing safety and fatalities in the agriculture sector. The AWG is chaired by the Commission Chair and its membership comprises representatives from agricultural peak bodies, unions and government.

The PGA through membership of the AISG and AWG works with other agricultural industry bodies and government to use evidence obtained from reported fatalities and accidents to identify causes and to prioritize actions that are designed to reduce both.

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<sup>3</sup> Subsidiarity - the principle that decisions should always be taken at the lowest possible level or closest to where they will have their effect, for example in a local area rather than for a whole country;  
<http://dictionary.cambridge.org/dictionary/english/subsidiarity>

<sup>4</sup> LEAN simply means creating more value for customers with fewer resources (<https://www.lean.org/WhatsLean/>)

### **Agriculture Industry's Commitment and Attitude to Safety**

The PGA strongly believes that the health and safety of workers is a foremost concern for all professional farmers and pastoralists. It is in their self-interest, both emotionally and financially, to protect their own health and safety as well as that of their employees.

Both the agriculture industry and agricultural communities are close knit, with most employees being family members or part of the local community. Any injury or death comes with a heavy emotional and psychological toll for those families and communities.

The majority of agricultural businesses are lean operations and any time lost due to injury and health can have significant negative impacts on operations and the ability to meet tight timelines associated with time-dependent activities like harvesting and mustering.

### **PGA's Strong Concerns**

The PGA is deeply concerned with the proposed offences set out in sections 30A, 30B and 31 of the Bill, as they focus on punitive measures rather than safety measures to improve safety. The PGA believes that this will undermine the current collaborative and partnership approach to improving safety in workplaces and encourage a more adversarial culture that will not deliver improved safety outcomes.

The fact that sections 30A and 30B of the Bill exclude a whole class of persons, namely "workers" and focuses solely on PCBUs (Person in Control of a Business or Undertaking) highlights this point. It is the responsibility of both business owners and employees to create a safe and healthy work environment. It is also possible for a business owner to have excellent health and safety systems in place, including inductions and regular safety meetings, and for employees to disregard or side-step those systems which leads to a death(s).

The very real fear that farmers and pastoralists have with the proposed industrial manslaughter sections of the Bill, is that if they find themselves in the latter scenario, irrespective of the systems they had in place for the benefit and protection of their employees and themselves, they will be deemed to be guilty until proven innocent.

The PGA is also very concerned at the one size fits all approach which fails to recognize that each industry, type of business activity, and size of business have unique health, safety and risk profiles.

The real world is full of variables including biological, economic, geological, meteorological, political and sociological that can impact negatively on businesses and their ability to create safe workplaces. While most businesses have minimal ability to minimize economic, political and sociological forces, many are able to effectively eliminate biological, geological and meteorological forces from their workplaces by operating inside well-constructed buildings. This option is simply not possible for all pastoralists and the vast majority of farmers.

The very nature of large scale agricultural and pastoral production is that business operations are conducted over land that is not flat and even like the floor of a building, are exposed to extreme weather events, bushfires, controlled burn-offs and involve unpredictable livestock.

In addition, these farming and pastoral operations require the use of a wide range of potentially hazardous chemicals and materials and a wide variety of machinery.

The vast majority of farmers and pastoralists, are diligent in developing and implementing safety procedures for as many potential threats to worker (employer and employee) health and safety as possible within the bounds of available time and money. Most importantly such safety procedures must be developed and implemented as a partnership and shared responsibility of both employer and employee, as most modern farming and pastoral operations are run by a very small number of workers who frequently work in isolation due to the sheer physical scale of modern farms and pastoral properties. The PGA believes that the WHS Bill undermines this positive safety culture based on partnership and trust and will encourage an adversarial culture which is incompatible with modern agriculture.

In addition to each industry and business having its own unique health, safety and risk profile, each industry and business has a different capacity to pay for and manage health and safety systems. For any business to sustainably exist so as to deliver products that customers want to purchase and to provide employment opportunities, a nett profit is essential. This means that all business management systems, including health and safety systems, must be funded out of the business's profit margin.

Industries such as mining and petroleum, often held up as the exemplar and benchmark for what workplace safety systems should be, typically have very large and generally predictable profit margins due to the high market demand and prices for their mineral and petrochemical products. While these industries have very high health, safety and risk profiles, they also have large profit margins from which to afford sophisticated and expensive safety systems. They also have the ability to afford the employment of specialized health and safety staff to develop and maintain the safety systems.

In contrast, most farming and pastoral operations, experience smaller and often infrequent profit margins, due to unpredictable nature of all the variables previously referred to that agricultural operations are exposed to. This inherently translates to a lesser capacity to afford the development of health and safety systems for the protection of all workers – employers and employees. Furthermore, the vast majority of farming and pastoral operations cannot afford to employ specialist and dedicated health and safety professionals to develop, implement and maintain health and safety systems. These tasks must be shared by the small number of workers that most operations can afford to employ – including owners. Of course this is also the reality for all small businesses not just farmers and pastoralists.

Describing these differences in capacity to afford and implement health and safety systems between different industries and businesses is in no way intended to excuse farmers and pastoralists from fulfilling their duty and responsibility to protect the safety of all workers. It is intended to inject some real world practicalities which are often neglected or rejected by people that have little experience in running a business, and particularly a small business, in the real world.

It is PGA's very firm view that despite the challenges faced by farmers and pastoralists in affording, both in time and money, the development, implementation and maintenance of health and safety systems, that the vast majority of farmers and pastoralists do develop fit for purpose, cost-effective systems to protect all workers within their operations.

It is the PGA's grave concern that if the proposed industrial manslaughter provisions were enacted, that in the event of an agricultural workplace fatality, the subsequent investigation would not take into account the fit for purpose, cost-effective systems that the farm or pastoral employer has been able to develop and implement within their capacity to do so, because the benchmark for such systems will be the mining or petroleum industries.

The PGA's grave concerns would be marginally relieved, if there was a clear articulation of how an investigation of a fatality would be undertaken under the proposed WHS Bill, that business owners will not be assumed to be guilty until proven innocent, and that evidence of fit for purpose health and safety systems being developed and implemented will carry significant weight or rule out the application of any of the industrial manslaughter provisions.

However, the PGA sees no such articulation of this and therefore our grave concerns are not alleviated.

#### **PGA Recommendation:**

Based on the above, it is PGA's very strong recommendation:

*That the proposed Industrial Manslaughter offences set out in sections 30A, 30B and 31 of the Bill be rejected in full, the current offences set out in the OSH Act be maintained, and the Government and WorkSafe engage with the business community in a collaborative dialogue regarding positive initiatives to improve safety and protect all workers.*

#### **Opportunity to appear before a Committee Hearing:**

The PGA is keen to participate in any hearings that the Committee may conduct as part of the Inquiry process. This would provide the representatives of the PGA the opportunity to appear before the Committee to further elaborate on the views provided in this submission.

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