



SUBMISSION

To

The Department of Transport

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**

Phone: **(08) 9486 2100**

Facsimile: **(08) 9361 3544**

Email: **chriswyhoon@wafarmers.org.au**

Contact Name: **Chris Wyhoon**

Title: **Executive Officer (Transport & Farm Business/Economics)**

January 2010



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, commercial egg producers and beekeepers.

It is estimated that collectively our members are major contributors to the \$6.9 billion gross value of production (2007/08 – ABS, WA Agri-Food Industry Outlook – December 2009) 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 to the Road Traffic (Vehicles) Bill 2009 – Compliance & Enforcement Provisions

WAFarmers is aware that following: community concerns about road safety, concerns about road transport sector safety and efficiency, anomalies in the legislation that exists between States and Territories and a need to improve outcomes for road infrastructure and the environment, the National Road Transport Commission (NRTC) has drafted and released for public comment an exposure draft of the model national 'Road Transport Reform (Compliance and Enforcement) Bill'

Whilst WAFarmers supports transport industry reforms that will overcome the problems outlined above, WAFarmers believes that in its current form the Bill will place unrealistic expectations on WA farmers and commodity receivers.

Fundamentally, WAFarmers supports a chain of responsibility in principle. That is, adequate and equitable sharing of responsibility of liabilities involving supply chain participants in dimension incursions. The inverse would equally apply in that those individuals who through their actions cause a law to be broken, must be penalised without transferring liability to those out of control of those decisions involved in that action.

There must not be a default position that results in a transporter or any other member of the supply chain taking greater responsibility than others in the same supply chain.

In Part 9, Section 108, it is prescribed that all officers of a body corporate, and employees concerned in the management of the body corporate are assumed liable for breaches in the event that a fellow officer or employee committed an offence. Furthermore in the event of a successful prosecution resulting in a conviction, all management employees, and officers of the body corporate, are liable for similar penalties.



Where else in road traffic law is this prescribed? In reckless driving, driving under the influence of alcohol and culpable driving offences, only the offender is prosecuted, even if others knew of the dangerous behaviour beforehand.

WAFarmers acknowledges that in Part 9, Section 108, clause 6, that anyone other than the driver/co-driver, can have access to 'reasonable steps defence'. Granted, however why do all affected 'third-party' persons, even with 'reasonable steps defence' have to be exposed to that extent of the legal system as a starting point?

WAFarmers is concerned that over-use of this legislation will see countless employees, and officers of the body corporate, be subjected to ghastly expensive, time consuming and stressful court appearances to prove that they have such defences, and a resultant loss of productivity.

More disturbing to WAFarmers are Part 9, Sections 109 and 110, which outline similar action against partners of businesses. WAFarmers highlights that most farming operations have a typical 'partnership' farm business structure, which often includes siblings, children and parents, many of whom are retired 'in town' although having some lesser input into the daily farm management.

Keeping in mind that penalties can include loss of licence for up to five years (that in itself harsh comparable to penalties for driving under the influence of alcohol or culpable driving), WAFarmers interprets such proposed legislation as including all of those stakeholders, which in the opinion of WAFarmers, is ridiculous.

Again, although these people may have 'reasonable steps defence', that freedom of liability is only determined at the will of the court system. The costs to the rural community are mind-boggling, given the tyranny of distance to lawyers and courthouses, the inconvenience and stress to those individuals who have no knowledge of the actions of those out of their day-to-day interaction.

With respect to the 'Reasonable Steps Defence', Section 10, Division 1, Section 113 outlines that a person, other than the driver and co-driver, must prove to the court system that they did not know, or could not be expected to know. Furthermore, to influence their guilt or innocence, as per Clause 2 of that Section, a court may take into account the severity of the breach, and whether it is reasonable to expect the person charged 'should have known'.

In normal law, an offender is regarded innocent until proven guilty, and that it is on the prosecutions behalf to prove beyond reasonable doubt that the offender was guilty.

As a result, WAFarmers does not support the notion where a 'third party' who did not actually commit the actual crime, have to prove to a court system that they did not know the offence was committed and prove that it is unreasonable to be expected to have sufficient measures to prevent the offence.



The most prominent example of the unreasonability of such measures is the lack of on-farm weighing of grain at harvest, the lack of accuracy in determining grain density and the lack of control over animals behaviour at weighing. In terms of farm viability, very few could afford or justify a \$100,000 investment in on-farm scales to diminish their liability.

It should be not be up to the court system to determine if a producer was negligent in not having the economic means to provide weighing scales, when clearly industry best-practice has engineered mechanisms to counter 'logically indeterminable' grain weight variation, such as the Harvest Mass Management Scheme.

Another concern is the policing powers to enforcing officers that go beyond reasonable application. The risk is 'too much power' or worse still, abuse of power, which farmers witnessed, despite all assurance otherwise, through more regulated days not so long ago.

The power of policing officers to enter a business premises during business hours without search warrants, and to second those documents, without any guarantee of return, is a real concern. Most farming businesses have their business office inside their home.

The police are not compelled to adhere to confidentiality when dealing with administration papers, including quote books, invoices or computer files, all which for both farmers and transporters alike, is at times, commercially sensitive information.

Of more concern is under Section 58 'if in the opinion of a police officer or court concerned, the loads becoming displaced or unsecured would not give rise to an appreciable risk of harm to public safety, the environment, road infrastructure or public amenity, it is a 'minor breach'.

Even more of a concern is Division 4, Section 57 (1) which described the policing officers ability, in his own opinion, of judging a particular load as imminently dangerous, even if at the time it is not displaced, unsecured or potentially about to be.

This gives the power of discretion for an enforcing officer to be 'judge and jury' as to the perceived risk of a particular load. In an agricultural context, lack of knowledge of specific loads, such as hay, straw, livestock or machinery, by enforcement officers, could potentially halt the agricultural supply chain, simply on 'one's opinion'.

This is a draconian measure which undermines the legal system and personal liberties, especially if by the nature of the load, puts that operator into a major risk breach.



The potential inconsistency between law enforcement officers opinions, depending on their experience, knowledge, or even their mood on the day, without any justification, will cause massive casualties in terms of transporters. If the breach is major by the nature of the load (again potentially mis-interpreted according to Section 60) which goes on and causes that officer to impound that load such as in Section 64 (5) that person's business is unduly affected.

Division 3, Section 52 (a) is a real concern, using 40mm as the distinction between minor and substantial breaches. WAFarmers wishes to know how their members can prevent sheep's limbs protruding less than a mere 40mm from a stock-crate, given necessary ventilation under the Land Transport standards.

Under Australian Animal Welfare Standards and Guidelines 'Land Transport of Livestock', offences exist for instances where livestock are not allowed to stay stationary on trucks, 'under-loading' in terms of density occurs to get within weight limits.

Two animals in smaller trucks designed for six-eight, are a potential unstable load given their ability to move, and thus open to interpretation by enforcing officers as 'risk to public safety'.

In times of heavy braking, animals will inadvertently shift their weight, and grain will shift, causing axle limits to be exceeded, albeit momentarily.

In the event of rain during transport, sheep can cause a load to exceed limits, they excrete 'dangerous loads' under the definition of 'environmental' harm in breaches.

WAFarmers calls for an exemption of livestock, with obvious conditions, to allow for those professional operators to transport livestock without taking responsibility for an animals habitual nature or out of the drivers control.

Current design of hay bales, given their variation of shape, make it impossible to guarantee that a 'tuft' of hay (of almost negligible risk) won't be 40 mm wider than trucks.

In short, WAFarmers, whilst recognising the need for a level of compliance, wishes to point out in this submission that transporting agricultural products, and/or transporting in regional areas, are a 'special case'.

Wafarmers thanks the Minister for allowing us to participate in a consultative process, and stresses that it is essential that we are given the opportunity to present a more detailed case in person, with many applied examples that illustrate how draconian and at best, unsuitable, these proposed laws are to rural and regional Western Australia.

END