



NORTHERN TERRITORY CATTLEMEN'S ASSOCIATION



Work Health and Safety (National Uniform Legislation) Amendment Bill 2019

Date: Tuesday, 8 October, 2019



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1. INTRODUCTION

The Northern Territory Cattlemen's Association (NTCA) is the peak body for the NT cattle industry, providing leadership at the Territory, national and international level on industry, trade, resource management, and economic and social policy. Representing over 90% of the Territory industry the NTCA maintains a unique position as Australia's most representative producer body and single conduit for engagement.

The NTCA has been a leader in driving positive change while also defending the position and integrity of the cattle sector, its producers and connected supply chains operating into domestic and international markets.

As the predominant primary industry sector, the cattle industry underpins the economic, social and environmental foundations of the NT and Northern Australia. The NTCA has taken a proactive approach on environmental policy around renewable energy, sustainable development and social responsibility connected to the reengagement of Indigenous land and people in the modern beef industry.

The NTCA provides policy leadership across the primary industry sector including pastoral land conservation, market development and trade, regional development, Indigenous employment and international engagement.

In representing the interests of members, the NTCA is critically interested in the policy position of the government, opposition and independents on a range of important issues.

2. BACKGROUND - NTCA

NTCA's membership ranges from small family and indigenous operations, to large corporate organisations. The NTCA exists to advance and protect the interests of Northern Territory cattle producers.

Our Northern Territory members are environmental stewards responsible for a landmass in excess of 680,000 square kilometres (45% of the NT landmass), producing 600,000 high quality cattle per year.

The pastoral industry is the Northern Territory's third largest GDP earner, **equating to more than 80%** of primary production in the NT. With an investment of \$4.5 billion in the NT, our industry



generates over \$750 million (ABARES) directly and in excess of \$1 billion indirectly into the Northern Territory's economy.

The industry directly provides in excess of 1800 jobs and has contributed to the growth of the Territory for over 150 years. It continues to increase in size, productivity and efficiency.

NT producers supply cattle to all mainland states and produce quality animals suited for the live export trade to South East Asia, including, on average up to 400,000 head exported to Indonesia and Vietnam annually.

The NTCA:

- Is a leader in building effective, long term and strategic international relationships assisting in providing an effective engagement platform for industry and government in our crucial markets;
- Continues to invest in indigenous training and employment with over 400 youth trained and mentored by our qualified staff, resulting in employment in the pastoral industry.
- Also focuses on development and capacity building for our industry youth, creating opportunities and the encouragement to maintain linkages to the NT pastoral industry and its future.

Membership Base

The NTCA membership base draws on the NT herd of 2.2m head, across Indigenous and non-indigenous family operations, corporate organisations and foreign owned enterprises running on 680,000 kms² of pastoral lease, crown lease, freehold and Aboriginal freehold land (ALRA 1976).

The membership base includes corporate operations spanning Northern Australia. These iconic companies collectively manage vast areas of Western Australia, the Northern Territory, Queensland and New South Wales, and make a major contribution to regional development, employment, Australian food production and overseas trade.

The NTCA, like no other representative body in Australia can claim close to full industry membership.



3. EXECUTIVE SUMMARY

The NTCA asks the question: Is there empirical data that shows that industrial manslaughter laws will save lives?

Will having a maximum penalty of life imprisonment for an individual and a \$10.2 million in fines for a body corporate lead to less workplace deaths?

The very short answer is no. In fact, there is no data which shows that accidents in the workplace or deaths for that matter have reduced since their introduction in Queensland or Victoria.

The obvious theory behind the laws is that the fear of a lifetime in prison will have an impact yet there is no example of this occurring.

The NTCA believes the greater emphasis needs to be on ensuring that the proper processes and OH&S guidelines are in place at all levels rather than a headline grabbing exercise.

The cattle industry is constantly working hard to continually improve its work, health and safety environment to reduce risk and harm to all employees. The NTCA does not believe that having an emotive trigger like industrial manslaughter laws will expedite the process faster than it is already occurring.

Increasing penalties is one form of response but it will not, in isolation as claimed, save lives in the workplace.

Only a consistent implementation model based around constant education and good work practice culture will deliver the results which are being claimed.

The Request for Prosecution introduced within these legislative changes is of grave concern to the pastoral sector. Upon our reading, this means any person may be in a position to refer a matter to the more serious charges of Industrial Manslaughter based on a cursory level of information rather than a vigorous investigation. Section 1 a) best highlights this concern if a "person reasonably believes."

The relevant section outlines the process below:

(1) Subject to this section, a person may request the regulator to bring a prosecution if:

(a) the person reasonably believes that the occurrence of an act, matter or thing constitutes:

The NTCA also questions why it is that Local government members and in the broader sense Ministers of the Crown are not included as those conducting a business or undertaking but that the Crown can be in breach of this Act.

The NTCA raises the question: why are Minister of the crown exempt from this Act when clearly, they are the ones who prescribe Budgets for which those public servants must operate? Is it not fair and reasonable that if they provide a less than adequate Budget and policy environment and there is a death that they should be examined for a level of culpability?



The agriculture sector is an area which is constantly working on its work, health and safety practices. It has to do so because we are industry which can be from time to time dangerous. We need to all we can to mitigate the risks for everyone involved. However we question whether the introduction of such laws will deliver the same level of safety or mitigate the risks enough based around a dramatic increase in penalties.

The Northern Territory Government needs to take greater care, slow down and look at the unintended consequences of these laws will be and who the unintended victims of these laws will be. Many small business operators are going to not only face the threat of lifetime imprisonment but will also face the prospect of massive insurance increases to mitigate those costs.

In the meantime there will be no guarantee that the changes and additional costs will save a life.

3.1 Request for Prosecution

The Request for Prosecution introduced within these legislative changes is of grave concern to the pastoral sector. Upon our reading, this means any person may be in a position to refer a matter to the more serious charges of Industrial Manslaughter based on a cursory level of information rather than a vigorous investigation. Section 1 a) best highlights this concern if a “person reasonably believes.”

The relevant section outlines the process below:

(1) Subject to this section, a person may request the regulator to bring a prosecution if:

(a) the person reasonably believes that the occurrence of an act, matter or thing constitutes:

(i) a Category 1 offence; or

(ii) a Category 2 offence; or

(iii) industrial manslaughter; and

(b) no prosecution for the offence has been brought within 6 months of the occurrence.

(2) No request may be made more than 12 months after the occurrence of the act, matter or thing.

(3) The request must be in writing and specify:

(a) the particulars of the occurrence of the act, matter or thing; and

(b) the grounds for the belief that the offence occurred.

(4) A request under this section may include the prosecution of more than one offence if the offences all relate to the same occurrence of the act, matter or thing.



(5) Within 3 months after receiving the request, the regulator must give written notice of the request to the following:

(a) the person who made the request;

(b) any person alleged to have been responsible for the occurrence of the act, matter or thing.

(6) The notice must include particulars of the following:

(a) the status of any investigation into the occurrence of the act, matter or thing;

(b) the status of any prosecution in relation to the occurrence;

(c) if no investigation is being conducted or if no prosecution is being brought – the reasons why not.

(7) The regulator may publish the information referred to in subsection (6) on the regulator's website.

(8) The regulator need not give the notice under subsection (5) if the request relates to an occurrence about which information is published on the regulator's website.

(9) The regulator must not state, to any person referred to in subsection (5), a view that is contrary to the views of the Director of Public Prosecutions on the merits of a prosecution in relation to the occurrence.

(10) In this section a reference to the occurrence of an act, matter or thing includes a reference to a failure in relation to an act, matter or thing.

The charge of industrial manslaughter and the associated penalties is far more deserving of a thorough and vigorous process than "if someone reasonably believe." There is an enormous amount at stake for all concerned.

If this does not change then this section will be open to abuse through spurious and time-consuming complaints which prolong matters for all involved – not just the accused but also the family of those who have died.

It is simply not good enough to allow a third party like a union the ability to point the finger of guilt on to an individual without first satisfying the basic evidentiary process.

This area also raises the question of how does the Meaning of worker and their duties impact on the referral process of third parties? At no point is there any real acknowledgement that the worker has a primary responsibility to ensure they follow all instructions and take all due care in completing work to ensure their own safety.

The company or business may well have all processes in place to minimise risk but if the worker themselves don't follow those procedures how will this be viewed in the context of a third party referral?



3.2 Meaning of person conducting a business or undertaking

In this section the main concern is that Local government members and in the broader sense Ministers of the Crown are not included as those conducting a business or undertaking but that the Crown can be in breach of this Act.

The NTCA raises the question: why are Minister of the crown exempt from this Act when clearly they are the ones who prescribe Budgets for which those public servants must operate? Is it not fair and reasonable that if they provide a less than adequate Budget and policy environment and there is a death that they should be examined for a level of culpability?

(1) For the purposes of this Act, a person conducts a business or undertaking:

- (a) whether the person conducts the business or undertaking alone or with others; and
- (b) whether or not the business or undertaking is conducted for profit or gain.

(2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.

(3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.

(4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.

(5) An elected member of a local government council does not in that capacity conduct a business or undertaking.

(6) The Regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.

3.3 WILL THE LAWS SAVE LIVES?

The NTCA asks the question: Is there empirical data that shows that industrial manslaughter laws will save lives?

The very short answer is no. In fact, there is no data which shows that accidents in the workplace or deaths for that matter have reduced since their introduction in Queensland or Victoria.

The obvious theory behind the laws is that the fear of a lifetime in prison will have an impact yet there is no example of this occurring.

The NTCA believes the greater emphasis needs to be on ensuring that the proper processes and OH&S guidelines are in place at all levels rather than a headline grabbing exercise.



NORTHERN TERRITORY CATTLEMEN'S ASSOCIATION

Advancing and protecting the interests of cattle producers of the Northern Territory

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