



8 October 2019

Economic Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
Darwin NT 0801

Via email: EPSC@nt.gov.au

Dear Sir/Madam,

RE: Submission regarding Work Health and Safety (National Uniform Legislation) Amendment Bill 2019

Austral Fisheries welcomes the opportunity to provide feedback on the proposed amendments to the *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)* as outlined in the *Work Health and Safety (National Uniform Legislation) Amendment Bill 2019*.

Austral Fisheries are committed to continuously improving safe systems of work and safe practices in the Australian fishing industry to nurture a culture where safety is paramount. We welcome any regulatory reforms that seek to safeguard the safety and wellbeing of workers and the community. However, we express concerns that very little evidence has been presented to demonstrate that the proposed amendments in the current Bill will lead to better safety outcomes.

We feel uniquely qualified to comment on the proposed amendments as a result of our own experience under the current Act. In 2018 we entered into a WHS undertaking with NT WorkSafe as an alternative to prosecution and punitive measures in response to a fatality that occurred on board one of our vessels in 2013. As a result of that undertaking we have contributed over \$1.2 million towards improving safety in the fishing industry and the Northern

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Territory Community to date.¹ Most importantly, our direct initiatives have sparked a cultural movement in the fishing industry that will overdeliver on the terms of the undertaking and create an enduring legacy for the deceased worker and his family. This would not have been achieved with punitive measures.

The proposed amendment to prevent a WHS undertaking from being accepted in respect of manslaughter is of particular concern. It is our experience that WHS undertakings can have very positive and enduring effects on safety in the workplace, industry and the community in ways that are far more direct and relevant than punitive measures. We feel that this proposed amendment unfairly restricts the opportunity of benefits under WHS undertakings to flow to workers, industry and the community. We are not satisfied that the impacts of punitive measures against benefits to workers, industry and the community have been considered.

There is limited statistical evidence to demonstrate that workplace fatalities and injuries are due to insufficient punitive measures under the law. As such we are not satisfied the issue will be properly addressed by increased penalties. The current punitive measures in the *Work Health and Safety (National uniform Legislation) Act 2011 (NT)* are already substantial and more effective means of ensuring compliance should be thoroughly explored.

A study in safety in the fishing industry led by Dr Kate Brooks (KAL Analysis) working with other WHS specialists, industry support and the participation and support of the Australian Maritime Safety Authority (with funding from the Fisheries Research & Development Corporation) produced a number of non-punitive measures to improve safety culture in the fishing industry. Among these recommendations was the need for improved collaboration between safety regulators and the seafood industry, and improved collaboration between State and Federal government agencies. Simply increasing punitive measures as a populist knee jerk reaction to law making is intellectually lazy and not at all conducive to the progress that can be done when everyone is pulling together.

We note that the Bill seeks to amend the Northern Territory *Work Health and Safety (National uniform Legislation) Act 2011*. This was intended to be nationally uniform legislation. The Amendment Bill proposes to diverge from consistency with other State and Territory legislation. Although some other States have imposed similar legislation, such as Queensland, a national consensus on the measures proposed in the Bill has not been adopted and the reasons for this have been explained.

The cross jurisdictional inconsistency in safety legislation adds an unacceptable layer of complexity to compliance for businesses who operate across multiple jurisdictions. This is particularly relevant for maritime businesses who not only have to be concerned with cross jurisdictional safety law inconsistency, but also the inconsistency of those State and Territory safety laws with maritime safety laws under the Australian Maritime Safety Authority (AMSA).

¹ The full details of the WHS undertaking are published on the NT WorkSafe website:
<https://worksafe.nt.gov.au/laws-and-compliance/enforceable-undertakings/austral-fisheries-pty-ltd>

We express further concerns that the Bill was developed without any consultation external to government. Whilst we accept that the Bill proposes to enact recommendations in the Lyons Report, we believe the consultation relied on in that report is not representative of the fishing industry and the timeframe to provide submissions to the Economic Policy Scrutiny Committee has not allowed us to properly assess the impact of the proposed amendments to our operations, our stakeholders and the fishing industry.

There also appears to be no evidence of modelling to assess the prohibitive cost and impact to business. Some considerations we believe to be relevant in relation to the proposed amendments in the *Work Health and Safety (National Uniform Legislation) Amendment Bill 2019* include:

- The impact on insurance premiums. In particular for inherently high-risk industries.
- The potential deterrence for suitably qualified and capable leaders to pursue leadership roles in organisations that undertake inherently high-risk work.
- The potential deterrence to investment in inherently high-risk industries.

If these considerations are not properly examined there is a real risk that the good intentions behind the Bill may not be realised in the way they were intended. It could lead to less investment towards safety innovation as a result of increased insurance premiums and reduced appetite for investors to inject funds into high-risk industries. Most crucially, the radical measures proposed by the Bill may act as a deterrent to intelligent leaders to take on leadership roles and drive safety innovation. This would be damaging to safety culture across all industries.

For the above-mentioned reasons, we urge the Committee to thoroughly assess if the Bill strikes an acceptable balance between accountability and impact to business so that the best outcomes can be achieved for wellbeing of workers, industry and the community.

Yours Faithfully

DAVID CARTER

Chief Executive Officer
Austral Fisheries Pty Ltd