



Government of **Western Australia**
WorkSafe Commissioner

Inquiry into the **agricultural industry in Western Australia**

Report to the WorkSafe Commissioner

March 2023



Mr Darren Kavanagh
WorkSafe Commissioner
303 Sevenoaks Street
Cannington WA 6107

Dear Mr Kavanagh,

Inquiry into the Agricultural Industry in Western Australia

On 23 June 2022, following the twelfth fatality in the agricultural industry in Western Australia within 12 months, you announced an inquiry into the industry, in accordance with Part 8 of the *Work Health and Safety Act 2020* (WA) (the WHS Act).

On 23 August 2022, you appointed me, pursuant to Schedule 1, clause 2(5) of the WHS Act to assist you with the inquiry.

The inquiry is now complete and I present to you my report. The report contains my findings and recommendations for each of the terms of reference.

I thank you for the opportunity to inquire into this important issue and report to you.

Yours faithfully

Pamela Scott
Inquirer
Agriculture Industry Inquiry
22 March 2023

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Glossary

The following terms are defined for the purposes of this Report.

ABARES	Australian Bureau of Agricultural Resource Economics and Sciences
ABS	Australian Bureau of Statistics
AgHealth Australia	AgHealth, School of Rural Health, University of Sydney
ACCC	Australian Consumer and Competition Commission
ANZSIC	Australian and New Zealand Standard Industrial Classification
Coming home safely report	Parliament of Western Australia, Legislative Council Standing Committee on Public Administration, Report 31, <i>Coming home safely: WorkSafe and the workplace culture in Western Australia</i> (August 2020)
Commissioner	WorkSafe Commissioner
COSH	Commission for Occupational Safety and Health
DMIRS	Department of Mines, Industry Regulation and Safety
Farmsafe Australia	National, non-government, not-for-profit, farm safety body
GPA	Grain Producers Australia
HSA (EI)	Health and Safety Authority, Ireland's work health and safety regulator
HSE (GB)	Health and Safety Executive, Great Britain's work health and safety regulator
NCIS	National Coronial Information System
PCBU	Person conducting a business or undertaking
PGAWA	Pastoralists and Graziers Association of Western Australia
PPE	Personal protective equipment
ROP	Roll-over protection
R&RS Development Committee	Parliament of Victoria, Rural and Regional Services Development Committee report
Safe Farms WA	Western Australian non-government, not-for-profit, farm safety body, a member of Farmsafe Australia
SOWE	<i>State of the Work Environment – work-related traumatic injury fatalities in Western Australia, 2011-12 to 2020-21p</i> , published by DMIRS
SWA	Safe Work Australia



<i>They never came home report</i>	Parliament of Australia, The Senate Education and Employment References Committee, 2018
WASIA	Western Australian Shearing Industry Association (Inc)
WHS	Work health and safety
WHS Act	<i>Work Health and Safety Act 2020 (WA)</i>



Executive summary

There are approximately 5,725 agricultural enterprises in Western Australia. The industry employs around 44,800 workers of whom approximately 36,700 are directly employed.¹

The agricultural industry is far from homogenous. It ranges from small, family-owned and operated farms through to large corporatised, sophisticated operations, some of which are still based around families. The differences amount to a number of aspects, two of which are the attitudes to the operations of the business and the resources they have available to them.

The agricultural industry has had the highest number of fatalities of all industries in Western Australia and Australia for many years. In 2021-22, the number of deaths was significantly higher in Western Australia than for a number of years.

Each death is a tragedy in itself and in its effect on loved ones, communities and businesses. Each serious injury affects not only the injured person at the time and during their recovery, but often for the rest of their life. It also affects their families, communities and businesses. I express my condolences and concerns for those who have suffered as a consequence of a death or serious injury in the agricultural industry.

On 23 June 2022, following the twelfth work-related death in the agricultural industry in Western Australia in the preceding 12 months, the WorkSafe Commissioner, Mr Darren Kavanagh, announced that there was to be an inquiry into the agricultural industry in this State.

This Inquiry has examined the circumstances of all deaths and serious injuries, where information is available, for the last five years. It has compared the data about those deaths and serious injuries with those in other industries and with other States' data.

To set the context for the Inquiry's Report, I have set out a range of background information. That information is about:

1. The nature and scope of the agricultural industry in Western Australia;
2. The demography of the industry and the changes it is experiencing;
3. The attitudes and behaviours regarding safety within the industry, including:
 - attitudes to risk;
 - attitudes to safety regulation and compliance.

¹ *BankWest Curtin Economics Research Centre, Agriculture in WA – Update Note, report by Steven Bond-Smith, Daniel Kiely and Silvia Salazar.*

The agricultural industry's approach to safety

This Inquiry heard from many people within the industry about:

1. the dangers in the industry;
2. their experiences of fatalities and serious injuries; and
3. their experiences of and attitudes towards dealing with the regulator.

Many farmers are very conscious of the risks inherent in their operations and actively work towards overcoming those risks and keeping their workers safe. Others treat risks and incidents, injuries and deaths that arise as being inevitable.

Many organisations within the industry are focussed on improving the safety of their people.

However, it is clear that the people and organisations are calling for leadership and education, and support from the Western Australian Government and the work health and safety regulator, to assist them.

Government approach to the industry

This Report also examines the history and the current structures and operations of the State's work health and safety regulator and the department supporting its work, the Department of Mines, Industry Regulation and Safety (DMIRS). This Report finds that the Western Australian Government, DMIRS and the regulator have not applied the necessary focus to the agricultural industry that its safety record would indicate is necessary. That is in both absolute terms and in comparison with the resources applied to other industries, all of which have safety records which are superior to that of the agricultural industry.

Industry leadership

This Inquiry found many examples of polar-opposite views:

1. of industry leaders who view the need to take the time and effort to keep their people safe as a nuisance, an impediment to productivity and a reduction in profitability; and
2. of industry leaders and farmers consistently working towards education and training and better methods of keeping their people safe.

Findings and recommendations

Term of reference (a) (page 48)

The circumstances of all deaths and serious injuries in the agricultural industry in Western Australia for the five years to 30 June 2022.

This term of reference deals with the circumstances of all deaths and serious injuries in the industry in Western Australia for the last five years.

This Inquiry concludes that there are a number of common causes of fatalities and serious injuries including:

- a failure to use safety equipment and personal protective equipment;
- use of unsafe methods, particularly in dealing with plant and equipment and large animals;
- a lack of awareness of the location of bystanders and other workers.

It demonstrates that:

- approximately 90 per cent of the fatalities were men;
- nearly half of the men were aged over 55;
- in descending order the circumstances involved:
 - being crushed or struck by a tractor or other large machinery which was either being repaired or it was idling while awaiting engagement of the gears;
 - a quad bike crash resulting in the driver being crushed and asphyxiated, or having head or neck injury;
 - a vehicle roll-over or crash, or a vehicle being reversed or moved and crushing an unsighted bystander;
 - being crushed by livestock;
 - falling from the roof of a shed under construction.

These incidents occurred on cattle, sheep, cropping, dairy and fruit producing properties.

Term of reference (b) (page 56)

Comparing the numbers of deaths and serious injuries in agriculture in Western Australia and other industries in Western Australia, and with the agricultural industry in other Australian jurisdictions, including changes or trends over the five years to 30 June 2022.

There are fluctuations in fatality rates in the agricultural, construction and mining industries over the years covered by this Report, and it is difficult to identify any particular trends, due to both the fluctuations and the statistically low numbers of fatalities. However, what stands out clearly is that agriculture is the most deadly industry.

In 2021-22, the number of fatalities in the Agriculture, forestry and fishing industry Division of the Australian and New Zealand Standard Industrial Classification (ANZSIC) in Western Australia was significantly higher than for the previous 10 years. Over three quarters of Agriculture, forestry and fishing industry work-related fatalities occurred in the Agriculture subdivision of the ANZSIC codes. This is the part of the industry which grows crops and farms animals, and is commonly referred to as the farming industry.

This data suggests that Western Australia is unique in the significant increase in fatalities in the industry in the year 2021-22. However, New South Wales experienced a spike in fatalities in 2019-20, against its general downward trend. Victoria has experienced quite large fluctuations over the five years, Queensland experienced a spike in 2018-19.

In comparison with other industries, agriculture in Australia is the most dangerous in terms of the numbers of people who have lost their lives to their work or have been seriously injured while performing work. This situation is far from unique to Australia or to Western Australia. The same is true in Europe, Great Britain and Ireland.

The number of fatalities in the industry in Western Australia in 2021-22 has been exceptionally high. For other years, it does not appear that Western Australia's agricultural industry is more dangerous than the industry elsewhere in Australia. However, it remains the most dangerous of all industries.

Term of reference (c) (page 63)

Incident data collection and coordination across Australia for the past five years, considering agricultural work activities that cause fatalities, but which are not recorded due to the scope of the Australian and New Zealand Standard Industrial Classification (ANZSIC) code for agriculture.

The work health and safety agencies throughout Australia, and other organisations such as AgHealth Australia, use the ANZSIC codes to classify and analyse the fatalities and injuries in industry. However how they use them and what other data they consider varies.

The ANZSIC codes appear to be used for two purposes:

1. for analysing safety according to industry and allocating work and resources;
2. for public messaging to raise safety awareness.

This Inquiry found that for the purposes of the public messaging, the regulator and DMIRS ought to focus at a deeper level than the ANZSIC general industry divisions. These general divisions do not have meaning for the various sectors of the agricultural industry. Those various sectors focus only on their own sector, such as cropping, dairy or fruit growing. What counts in forestry or fishing, has no particular message for them.

Recommendation 1 (page 66)

That DMIRS and the Commissioner continue to utilise the ANZSIC codes for their own internal purposes, but that they be supplemented with other data sources.

Recommendation 2 (page 66)

That DMIRS and the Commissioner utilise the Agriculture and support services (05) subdivisions of the ANZSIC codes separately rather than the Agriculture, forestry and fishing major division (01), for the purpose of focussing attention of the farming sector on fatalities and serious injuries.

Term of reference (d) (page 67)

Recommending strategies, performance measures and targets to reduce and eliminate deaths and serious injuries.

The Report notes that there is a fear of the regulator amongst many in the industry, and that this results in a desire by a large section of the industry to be invisible to the regulator.

At the same time, the very limited resources devoted to the industry by DMIRS and the regulator has not assisted in overcoming the problems of safety within the industry.

The Report notes that the regulator cannot control the number of deaths or serious injuries, so placing targets on those numbers is not practicable. The Report also notes that due to the significant under-reporting of serious injuries within the industry, until that under-reporting is rectified, it is not feasible to place any targets on the number of serious injuries.

However, the Report notes that it is feasible to identify performance measures and targets for activities of the regulator aimed at improving culture, safety awareness and practice in the agricultural industry and within the regulator's operations.

The new *Work Health and Safety Act 2020* (WHS Act) with its industrial manslaughter provisions, along with the recent increase in fatalities in the agricultural industry, have created a sense of urgency. The Western Australian Government must take advantage of this sense of urgency, and focus on providing the support and resources the industry needs to improve its safety.

The regulator has a statutory role in providing advice, information and training, as well as using its enforcement powers.

This Inquiry examined successful regulatory and advisory support to the agricultural industry in other jurisdictions and makes the following recommendations.

Recommendation 3 (page 76)

That in the allocation of resources amongst industries, the agricultural industry be prioritised, both within the WorkSafe Group of DMIRS and externally.

3.1 Within the WorkSafe Group

- (a) A dedicated, specialist Agricultural Team be established within the new WorkSafe Group within DMIRS.
- Members of the Agricultural Team to include inspectors and liaison officers, similar to those in the Mines Safety inspection team.
 - Given the need for the Team to gain the respect of the agricultural industry, Team members to be specifically recruited for this team.
 - Consideration be given to the location of Team members.

- (b) The Team's objective, and accordingly their work allocations and resources, be to set out a plan for inspections for the next five years and the plan to be implemented. Its work will primarily be proactive and the plan will include key performance indicators for proactive activities. This plan ought to be publicised widely including the sectors to be inspected. Direct contact to be made with farmers alerting them that they will be inspected on a given date.
- (c) Its activities will be:
- Proactive regulatory and advisory inspections;
 - Attendance at industry events;
 - Development of, and updating, a comprehensive agricultural industry web page, including the use of materials from other jurisdictions (with their agreement), along with other materials already developed for the industry;
 - Materials to be translated into languages relevant to the workforce;
 - Development of a newsletter directed at farmers and their workers;
 - Engagement with industry media to publish a regular column about farm safety and ABC regional radio for a farm safety segment;
 - Reactive inspections.
- (d) A senior level manager to be appointed to lead this team to:
- Recruit and train inspectors for the particular attributes, attitudes and needs directed towards the agricultural industry;
 - Except in particular cases, guide an approach that prioritises the provision of information and advice. The regulator used such an approach in accordance with the [Statement of regulatory intent](#), for the first year of the implementation of the WHS Act. In this case though, given the need to change long term attitudes, this approach ought to apply for at least two years;
 - Set targets for:
 - Inspections;
 - Events;
 - Readership of newsletters and web page information;
 - Engage with industry leaders, external media and psychology experts to develop and publish media campaigns targeted to particular groups, issues and attitudes. These media campaigns to be played regularly over a number of years. A repetition is essential to embedding the message. Their effectiveness then needs to be assessed;
 - Engage with the industry to identify and enlist the support of leaders who are farmers to promote safety;
 - Through the Commissioner and the Work Health and Safety Commission, develop an overarching code of practice, or a suite of codes, specific to the agricultural industry.

(e) Major activities

- The Agricultural Team to set a proactive and preventative program of inspections of a number of sectors each year.
- The activities to include groups of inspectors attending, for example, no less than three farming centres each year to:
 - Conduct a public event – the public event would focus on a seminar or demonstration and use the opportunity to alert the local industry that there will be, within say three months, inspections of farms in that area. They would provide to those attending: checklists, workbooks, details of the advisory service to be outlined later in this Term of reference, as well as reference to reputable consultancy and training organisations. The public event could be held on the property of an industry leader or other willing host;
 - Inspections – this activity to include a set number of inspections in the area undertaken at the instigation of the team;
 - Review – approximately a month after the inspections, the team returns to the farming centres with a further public event, to inform the industry participants of the results of the inspections, including to provide positive feedback.

3.2 Advisory service

- (a) An advisory service to farmers be established in partnership with an industry organisation. Appropriate industry bodies for the partnership would include farming organisations such as those who have partnered with Victorian and New South Wales Governments, or engagement through a private organisation or a not-for-profit organisation. Alternatively, it may be administered internally by WorkSafe, as is the Tasmanian scheme and was the former ThinkSafe scheme in Western Australia.
- (b) This advisory service would:
- Be staffed by advisors with administrative support;
 - Have advisors who are recruited on the basis of their:
 - Knowledge of agricultural safety;
 - Ability to gain confidence of farmers and farm workers;
 - Have advisors without regulatory powers;
 - Provide advice to the benefit of the farmer;
 - Work with industry associations to promote the service;
 - Initiate advisory auditing visits to a substantial number of farms per annum;
 - Conduct a proactive program of visits aimed at particular sectors each year, plus a reactive program to respond to requests for visits;
 - Attend agricultural events such as field days;
 - Host events with either a general or specific focus, for example an event to demonstrate safe bog extraction techniques as is provided in Victoria;
 - Create a comprehensive, up to date website.
- (c) The information resources for this service may be able to be developed with the assistance of, or in conjunction with, the Tasmanian, Victorian and New South Wales programs.

Recommendation 4 (page 78)

That a fund be established through a levy on the industry and matching contributions by government. The purpose of the fund be to undertake ongoing media campaigns and other activities aimed at promoting safety in agriculture.

Term of reference (e) (page 80)

Workplace based consultation, participation and representation provisions, including the appointment, powers and functions of health and safety representatives and committees.

The Inquiry notes that the WHS Act provides:

- (a) that persons conducting a business or undertaking (PCBU) have a duty to consult with workers about matters relating to work health and safety;
- (b) for the sharing of relevant information;
- (c) that workers be given a reasonable opportunity to express their views or raise work health or safety issues or contribute to decision making; and
- (d) for when consultations between the PCBU and workers is required.

The WHS Act also provides for the election of health and safety representatives and for the establishment of health and safety committees.

This Inquiry finds that apart from those large sophisticated businesses which have human resources and safety specialists, the agricultural industry at large is unaware of these requirements.

The Inquiry also finds that the nature of the industry includes:

- its lack of unionisation;
- higher use of seasonal workers; and
- in some sectors, particularly in horticulture, having many workers;
 - for whom English is not their first language, and others having very little English at all; and
 - cultural differences,

and this means that these representation provisions need to be publicised within the industry, both to the PCBUs and the employed workers.

Recommendation 5 (page 83)

Steps to be taken to raise the industry's awareness of the consultation, participation and representation obligations and arrangements including:

- 5.1 Creating and publicising, on the agricultural industry webpages, information about the consultation, participation and representation obligations and arrangements. Such information ought to be made available in the languages represented in the agricultural industry workforce;
- 5.2 The participation of industry groups be sought to publicise these obligations and arrangements. The grower groups may be the most effective as they may be able to assist in the development of information targeting the particular circumstances of their sector.
- 5.3 Utilising the public events associated with inspections campaigns referred to in Term of reference (d), to educate farmers and workers about consultation, participation and representation obligations and arrangements.
- 5.4 The external advisory service also be tasked with educating farmers and workers about the arrangements.

Term of reference (f), (g) and (j) (pages 84)

A number of the Terms of reference are inter-related so it is appropriate that they be dealt with together. These Terms of reference are also related to Term of reference (d), which has covered many relevant aspects.

They are:

- **Term of reference (f) Measures to ensure State and Local Government policies, training and support to the agricultural industry is effectively aimed at eliminating deaths and serious injuries in the industry;**
- **Term of reference (g) Enforcement and compliance including the role and powers of work health and safety (WHS) inspectors and the application of enforcement tools including policy and codes of practice; and**
- **Term of reference (j) The role of WHS regulatory agencies in providing education, advice and assistance to the duty holders.**

This Report sets out some of the reasons supporting the use of a range of regulatory tools to achieve compliance with the regulatory scheme to achieve improved safety. It notes the policies and codes of practice, and the issues associated with the regulator's role in achieving compliance with the regulatory scheme. It also examines the considerations the regulator has in deciding whether or not to apply any particular regulatory tool, such as inspections, issuing improvement or prohibition notices, and in making decisions to prosecute for breach of the legislation. In particular the Report concludes that the regulator uses the discretion available through policies to make decisions appropriate to the particular circumstances of each case.

The Report notes the practical application of these regulatory tools, as well as the importance of preventative work by the regulator, such as providing information, advice, inspections and prosecutions.

This Report makes the following recommendations.

Recommendation 6 (page 88)

- 6.1 That a suite of codes of practice and guidance notes directed to the agricultural industry and its various sectors be developed.
- 6.2 The codes of practice and guidance notes be written as simple "how to" and "how not to" documents.

Term of reference (h) (page 97)

Arrangements to improve the health and safety of those engaged in high-risk work and the use of certain plant and hazardous substances.

The Report finds that there are high-risk activities that the agricultural industry has in common with other industries and some that are unique. The Inquiry identified the most common issues in the agricultural industry which need to be addressed as being:

- (a) Riding quad bikes over uneven ground, mostly without a helmet and often without roll-over protection (ROP);
- (b) Machinery and vehicle issues;
 - (i) design issues;
 - (ii) repairs “here and now”;
 - (iii) use of old or unsafe equipment;
 - (iv) service and maintenance accessibility;
 - (v) retrieving bogged vehicles;
- (c) Lone workers;
- (d) Lack of communication with unsighted workers;
- (e) Crushing by animals;
- (f) Reluctance to discipline unsafe workers.

There are known ways to deal with many of those risks and they are reflected in existing materials. As noted in Terms of reference (f), (g) and (j), there are codes of practice and guidance notes. These can be modified and used to improve the health and safety of those engaged in high-risk work if they are accessible, known and applied. The Recommendation in that regard is an important arrangement that will improve safety and health.

The Report also makes the following recommendations.

Recommendation 7 (page 105)

7.1 The regulator and the industry engage with machinery and equipment manufacturers and dealers to draw attention to the need for machinery and equipment to be fit for purpose, to remove the need for farmers to modify them, especially by removing guards.

7.2 There be a repeated campaign of safety alerts to farmers regarding:

- their use of quad bikes without ROP;
- their riding vehicles, such as quad bikes, motorbikes and horses without helmets;
- wearing seatbelts;
- reading labels on equipment;
- safe jacking, chocking and retrieval of vehicles from bog;
- removing guarding from machinery.

This campaign to be targeted at the appropriate groups. It may feature well-respected senior farmers.

The campaign needs to run repeatedly for several years to embed the messages and practices in the culture.

7.3 That funding be made available for a specified period to encourage:

- retrofitting ROP;
- upgrading yards and races to assist in the physical separation of workers from large animals;
- lone worker emergency contact systems.

7.4 The regulator draw to the industry's attention the codes of practice and guidance notes for dealing with some of these well-known hazards.

Term of reference (i) (page 106)

Issues affecting the industry associated with environmental factors such as the global pandemic and external influences.

This Report notes the significant impact on the agricultural industry and its labour force of:

1. The COVID-19 pandemic. Access to overseas and interstate workers had a significant effect on the numbers of workers available to the agricultural industry. It has led to:
 - workers, including family workers, increasing their hours of work;
 - tasks that could be deferred, such as pruning and maintenance, being put off.

Neither of these is sustainable, and both bring danger.

The Report notes the recent improvements in the availability of workers through the opening of the borders and through the significantly improved visa approval times.

The Report also notes that the COVID-19 limitation occurred during a period of record harvests.

The Report also notes the concerns expressed by UnionsWA about the safety and security of workers who rely on their employer to maintain their visa.

The Report notes that increased and sustained proactive work by the regulator may assist in alleviating some of the issues experienced by workers from a non-English speaking background. More inspections and relationship building with worker groups would be necessary.

2. The booming mining industry in Western Australia has created competition for labour that the agricultural industry must come to terms with. These include making itself more attractive to workers, not just regarding rates of pay, but in training, accommodation, lifestyle, and in the case of a small number of farmers, their conduct towards their workers.

The recommendations in Term of reference (e) for the regulator to raise the industry's awareness of the consultation, participation and representation arrangements may also assist in overcoming these issues.

Term of reference (k) (page 110)

Other measures to support the ongoing resolve of the WHS regulator (the WorkSafe Commissioner) and the Department of Mines, Industry Regulation and Safety (DMIRS) to reduce fatalities and incidents on farms.

The Report finds that to reduce fatalities and injuries on farms, in addition to increased proactive activities, DMIRS and the regulator provide timely information to alert the agricultural industry to safety incidents, their causes and the lessons to be learned.

Recommendation 8 (page 112)

That the regulator investigate and action a way to:

- provide timely information to the agricultural industry about the causes of fatalities and serious injuries as well as the preventative actions available to the industry;
- obviate the provision of that information compromising any potential prosecutions or potentially raising other legal issues; and
- ensure that families and others such as PCBUs and work colleagues of the deceased or seriously injured person are provided with advance notice of the publication and are supported.





Section 1: Introduction

1.1 Establishment of the inquiry

This Inquiry into the agricultural industry in Western Australia was announced by the WorkSafe Commissioner, Mr Darren Kavanagh (Commissioner) on 23 June 2022, following the twelfth work related death in the industry in the preceding 12 months.

On 3 August 2022, the Commissioner appointed me to assist in undertaking the Inquiry.²

Additional assistance was provided by a number of staff of the Department of Mines, Industry Regulation and Safety (DMIRS).

It is important to recognise and record that for each person who has died, there are many others; loved ones, workers and community members, who are severely affected. They experience trauma and the grief of the loss of a family member, friend, employer and community member.

The business will also be likely to suffer serious resource, organisational and financial consequences.

Each and every death is a tragedy, spread far and wide.

I express my condolences to each of these people who have suffered the loss of a person who is important to them. Each of those who have lost their lives was important.

Each person who suffers a serious injury, and their families, communities and businesses also carry a heavy burden of pain, possible ongoing physical and emotional challenges, and loss. They too are recognised.

Each death and serious injury also affects those who attend to assist, investigate and deal with the many consequences. They too carry the burden of trauma, on behalf of the community.

The purpose of this Inquiry is to examine what has happened to cause such loss, and to find ways to prevent it for a safer future for those people who work in the agricultural industry.

² The appointment was made pursuant to Schedule 1, Clause 2(5) of the Work Health and Safety Act 2020 (WA) (the WHS Act). To enable the disclosure to the Inquirer of information not otherwise available, the WorkSafe Commissioner, pursuant to s. 154 of the WHS Act also delegated to Ms Scott, the powers of the regulator in Part 8, Division 2 of the WHS Act.

1.2 Terms of reference

The Terms of reference for this Inquiry are to provide a report, making findings and recommendations on agricultural matters affecting safety performance and increasing incidents resulting in fatalities, including but not limited to:

- (a) Analysing the circumstances of all deaths and serious injuries in the agricultural industry in Western Australia for the five years to 30 June 2022;
- (b) Comparing the number of deaths and serious injuries in the agricultural industry in Western Australia with other industries in Western Australia and with the agricultural industry in other Australian jurisdictions, including changes or trends over the five years to 30 June 2022;
- (c) Incident data collection and coordination across Australia for the past five years, considering agricultural work activities that cause fatalities, but which are not recorded due to the scope of the Australian and New Zealand Standard Industrial Classification code (ANZSIC) for agriculture;
- (d) Recommending strategies, performance measures and targets to reduce and eliminate deaths and serious injuries;
- (e) Workplace-based consultation, participation and representation provisions, including the appointment, powers and functions of health and safety representatives and committees;
- (f) Measures to ensure State and Local Government policies, training and support to the agricultural industry is effectively aimed at eliminating deaths and serious injuries in the industry;
- (g) Enforcement and compliance, including the role and powers of WorkSafe inspectors, and the application of enforcement tools including policy and codes of practice;
- (h) Arrangements to improve the health and safety of those engaged in high-risk work and the use of certain plant and hazardous substances;
- (i) Issues affecting the industry associated with environmental factors such as the global pandemic and external influences;
- (j) the role of WHS regulatory agencies in providing education, advice and assistance to duty holders; and
- (k) other measures to support the ongoing resolve of the WHS regulator (WorkSafe Commissioner) and the Department of Mines, Industry Regulation and Safety (DMIRS) to reduce fatalities and incidents on farms.

In establishing the Terms of reference, the Commissioner consulted a number of industry stakeholders.

1.3 Public engagement and community consultation

Given the broad scope of the Terms of reference and the importance of receiving input from the industry, this Inquiry undertook an extensive consultation process, including inviting written submissions and undertaking community consultation meetings. The establishment of this Inquiry was widely publicised.

The Terms of reference, invitations to make submissions and community consultation meetings dates, times and locations were widely publicised throughout the second half of August 2022 until 31 October 2022 (see [Appendix 4](#)).

1.4 Community consultation meetings

Community consultation meetings were conducted in person in:

- Albany on 11 October 2022
- Geraldton on 17 October 2022
- Bunbury on 20 October 2022
- Merredin on 25 October 2022
- East Perth on 13 and 31 October 2022.

Community consultation meetings were also held by webinar for those who were unable to attend in person. They were held on 3, 9 and 10 November 2022.

A total of 140 people attended those consultation meetings.

The meetings concentrated on several of the Terms of reference which were directly related to the people working in the agricultural industry. The issues the meetings discussed were:

- Arrangements to improve health and safety of those engaged in high-risk work and the use of certain plant and substances.
- Any issues involving the culture, attitudes and behaviour within agriculture that may contribute to injuries and fatalities, particularly focused on how they may be addressed, to reduce those injuries and fatalities.
- The role of education in improving safety in agriculture.
- The role of work health and safety regulatory agencies in providing education, advice and assistance to those who hold a duty for safe work in agriculture.
- Issues affecting the industry associated with environmental factors such as the global pandemic and external influences.

Each of the meetings ran for approximately two hours in formal session, followed by an opportunity for informal discussion.

1.5 Written submissions

Written submissions were due to close at the end of September 2022. However, a number of interested individuals and organisations sought additional time to make submissions and others made contact with the Inquirer following the community consultation meetings to provide additional information and insights.

Written submissions were received from 47 individuals and organisations. In addition, Safe Farms WA forwarded 15 anonymous submissions.

Submissions ranged from a brief paragraph addressing a single issue through to detailed and lengthy submissions dealing with all of the Terms of reference.

I note that of the two major industry associations in Western Australia, one chose not to make a submission and the other made a submission on very limited issues.

AgHealth Australia³ undertook data analysis specifically to assist this Inquiry and made a written submission. In support of that submission, AgHealth set out material that relates to the National Coronial Information System (NCIS). These data are subject to ethical requirements to prevent the potential identification of persons involved in fatal accidents. For this reason, it provided the information to this Inquiry on the basis that it be treated as commercial-in-confidence. For the information of the Commissioner, I have attached that information as a separate document on the basis that it is not to be released publicly.

1.6 Other consultation

I also had meetings with more than 25 individuals and organisations, either in person or by telephone, at the instigation of those individuals and organisations or at the Inquirer's initiative.

Those who provided information, participated in consultation meetings and otherwise engaged with the Inquiry came from a wide range of groups. They included farmers from small family farms with no safety systems through to large organisations with sophisticated safety systems and many employees; representative organisations; industries that service the agricultural industry; agricultural safety bodies; safety training and consultancy organisations; education and research organisations and other government agencies.

I have set out in [Appendix 1](#) a list of comments and insights expressed during the community consultation meetings and in some submissions.

I record my thanks to all of those who contributed. Many of them have already made significant contributions to improving safety awareness and practice within the agricultural industry.

The Inquiry is grateful for the expert and generous assistance provided by Hon. A/Prof Tony Lower and Kerrie-Lynn Peachey of AgHealth Australia, Mr Peter Cooke of Agknowledge, author of *An industry engagement report for the Agriculture Working Group of the Commission for Occupational Safety and Health*, March 2022; Marie Gooch, Executive Officer, Safe Farms WA; and Danielle McNamara, Managing Director, Processworx, who have also provided valuable advice and information regarding the agricultural industry in WA. I also record my appreciation to members of DMIRS staff who have shared their expertise, advice and experiences, in particular inspector Julii Gaunt.

I also had the benefit of discussions with Ms Beth Green and Dr Bruce Mullan from the Department of Primary Industries and Regional Development; Ms Sally Panizza from the Department of Education; Mr Robert Owen, the Director of Public Prosecutions and Ms Alison Finn from the Office of the Director of Public Prosecutions. I had the privilege of accepting the invitation of Bill and Ann Cleland to visit their mixed crop and sheep property and thank them for their generosity of spirit. I am grateful to Heather Adams of Yaralla Pastoral Co. for the invitation to visit their Mount Barker property, however time did not permit this latter visit.

1.7 Acknowledgements

I extend special thanks to Jodie Kurupparachchi for her excellent executive assistance and to Sari Mattila for her expertise and assistance in the preparation of this Report.

³ AgHealth is an independent group administered by the University of Sydney and is part of the School of Rural Health, Faculty of Medicine and Health. AgHealth provided data and analysis drawing upon the National Coronial Information System (NCIS). It maintains records of non-intended fatalities, both work and non-work related, within agricultural settings across Australia. Its data is not limited to work-related incidents, but includes non-work incidents. This additional focus recognises on-farm risks to bystanders while work is being performed and during recreational activities.



Section 2: Background

There is some important background to be noted before embarking on the particular issues to be addressed. They are the nature of the agricultural industry and the circumstances facing the regulator in dealing with the industry.

2.1 The agricultural industry

The Australian and New Zealand Standard Industrial Classification (ANZSIC (1292.0)) code⁴ and is used to define the scope of the agricultural industry. The major division within that classification system is Agriculture, forestry and fishing. This major division includes subdivisions of Agriculture; Aquaculture; Forestry and logging; Fishing, hunting and trapping; and Agriculture, Forestry and Fishing support services.

The Agriculture subdivision includes:

- Nursery and floriculture production
- Mushroom and vegetable growing
- Fruit and tree nut growing
- Sheep, beef cattle and grain farming
- Other crop growing
- Dairy cattle farming
- Deer farming
- Other livestock farming

This Agriculture subdivision is the subdivision most relevant to this Inquiry. Also relevant is Agriculture, forestry and fishing support services, which includes the group called Shearing services. This Inquiry has focussed on these two groups – the Agriculture subdivision and Shearing services.

⁴ Australian Bureau of Statistics, *Australia and New Zealand Standard Industrial Classification (ANZSIC), 2006, Revision 2.0.*

2.1.1 Industry demography

The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) is part of the Commonwealth Department of Agriculture, Fisheries and Forestry. ABARES has gathered information and data regarding the agricultural industry which is relevant to this inquiry⁵. The latest detailed information comes from the 2016 Census so it is not as up to date as is desirable. This includes that in the agricultural industry:

- Owner-operator numbers are in decline. From 2001 to 2016, their proportion of the industry was:
 - 2001, 56 per cent;
 - 2006, 45 per cent;
 - 2011, 43 per cent; and
 - 2016, 37 per cent.
- 56 per cent of agricultural workers are farm owners and farm managers.
- The median age of farmers has increased from 51 in 2011 to 56 in 2016. While the workforce generally has increased in age, the increase throughout industry generally is 3.5 years as opposed to 5 years in agriculture.
- 96 per cent of bookkeepers within the industry are female.
- The agricultural workforce in 1996 was 280,544. It has decreased by 19 per cent to 228,372 in 2016.



Part of the reduction in the paid labour force arises from:

- increased mechanisation;
- corporatisation of farm businesses which leads to a reduction in owner-operators and an increase in salaried employees.

Other important features include:

- inter-generational transfer of farm businesses to a younger family member, while the previous owner continues to provide labour; and
- an increase in participation of other family members including women and children.

Broadacre businesses have a greater proportion of owner-operators and a lower proportion of employees working in the industry than other sectors. This is also evident in the beef industry where owner-operators and unpaid family workers outnumber employees by three to one.

⁵ Crowley-Shaw, J, Litchfield, F and Jackson, T, 2021, *Trends in the Australian Agricultural Workforce*, ABARES, Research Report No 21.11, Canberra, August 2021.

The proportion of unpaid family members contributing labour in the grains industry increased from four per cent in 2001 to 29 per cent in 2016.

Renowned demographer Bernard Salt has analysed the results of the 2021 Census⁶. He commented that farms are the largest group of businesses where family members, including those over 80 years of age, continue to work in the family business in some way, usually without remuneration. He speculates that “they may own part of, if not the whole of, the business they are working in”. He comments that 29 per cent of the workforce in the beef cattle farming industry are family members, followed by 25 per cent in sheep farming. He notes that “in the case of beef cattle farming, the cut and thrust of every day work has been passed on to the next generation but older farmers and graziers appear to quite like remaining connected to the business that they established (or inherited) in their youth”.

Importantly, Salt comments that while this large intergenerational section of industry has and continues to serve the country and the regional communities, family farms as a whole contribute to a diminishing agricultural workforce. He notes that “the economies of scale forcing farm aggregations erodes the basis of family farming”.

Corporate farming is growing, leading to fewer people in that workforce and in their communities. Salt notes that the age profile of livestock farmers, now peaking at 66 years of age, “means that by the end of the decade, unpaid family workers will diminish further”. The next generation, he says, may make other life choices than those of the last century’s farmers, and family farming, with its significant unpaid labour contribution, will not maintain its market share.

ABARES’ and Mr Salt’s analysis and observations are reflective of the views and stories conveyed during the community consultation meetings and in submissions of farmers to the Inquiry. These have included that the older men in the family, often having handed over the more physically challenging work to the next generation, still want to be in the paddock, operating machines and dealing with livestock. Others continue to work alone in moving cattle. These are the people who are at most risk.

A number of women in community consultation meetings have commented on their concern for the older men still working or at least being around that type of work.

A number of people reported that during the severe labour shortages brought on by the withdrawal of internationally available labour through Working Holiday Maker visas, during COVID-19, the older generation men were willing and available to do the type of work that they may no longer be safe performing. Some had to be actively discouraged from working with larger animals.

However, many older men have willingly handed over the physical work and are happy to continue to make contributions to other aspects of farming work in ways that are necessary to keep a modern farm efficient and safe. A number of older male farmers commented on the changes that had taken place in their work as they have aged but that in other circumstances, where there were no younger men to perform the work, either there were no children of the family or the children did not wish to continue working on the family farm, this became problematic for the men with the normal limitations brought about by ageing and fatigue.

⁶ *Bloodline, sweat and tears: Keeping it all in the family, The Weekend Australian, November 19-20, 2022, page 18.*

2.2.2 Attitudes and behaviours

It is clear to me that a significant part of the agricultural industry in Western Australia is committed to improving safety. However, it is important to understand the attitudes to safety within the industry. The significant aspects of this are:

- attitudes to risk; and
- attitudes to safety regulation and compliance.

(i) Attitudes to risk

There is little research in Australia about attitudes to risk in farming and amongst agricultural workers. However, [Appendix 1](#) sets out some of the attitudes expressed to this Inquiry.

• Victoria

An inquiry by the Parliament of Victoria, Rural and Regional Services and Development Committee (R&RS Committee)⁷ described a number of factors which affect the attitudes in agriculture to safety. These included that the financial constraints on farmers at that particular time (in 2005), including low commodity prices and drought, referred to by the Country Women's Association, meant that safety had a lower priority and that this affected decisions to make-do with older equipment, and cutting back on maintenance.

The R&RS Committee cited a study in New Zealand where over 90 per cent of farms were owned and run by families. The study found:

Farm women considered economic pressures to be a primary factor for unsafe practise on farms. This resulted in financially stretched farmers working longer hours, or working when they were tired. Employment of staff was intermittent, and those staff often lacked appropriate experience. This meant other family members had to find off-farm work, and consequently this increased the isolation of farmers on their farms during work hours.⁸

(I note that a number of people commented to this Inquiry that given the recent very good season in Western Australia, financial constraints are not the issue. However a lack of labour has been a significant factor.)

A number of the witnesses before the R&RS Committee expressed that there was an attitude prevalent amongst some, but not all, within farming that some accidents on farms were unavoidable and there was no point in taking preventative action; that there was literature describing the prevailing attitude as "tolerance of risk" and that accidents "only happen to other people".⁹

The R&RS Committee considered the view expressed by some, that there is a link between the age of farmers and their inclination or otherwise to adopt safer practices. They noted though that others expressed the view that there were two phases of concern – those with the "invincibility of youth" and those with the "complacency of experience" and the "it won't happen to me attitude".¹⁰

7 *Inquiry into the Causes of Fatality and Injury on Victorian Farms, Final Report, August 2005.*

8 *Inquiry into the Causes of Fatality and Injury on Victorian Farms, Final Report, par 5.7.*

9 *Inquiry into the Causes of Fatality and Injury on Victorian Farms, Final Report, August 2005, par 5.9.*

10 *Inquiry into the Causes of Fatality and Injury on Victorian Farms, Final Report, August 2005, par 5.10.*

The R&RS Committee also noted an attitude reflected in a study by E Cassell and L Day in 1988,¹¹ that “if it works, then don’t touch it, if you can get away with it, then keep on doing it”.

However, the R&RS Committee also recognised that more innovative farming enterprises and those farms that employed more workers were working to improve health and safety on their farms.¹²

- **Great Britain**

The Health and Safety Executive (HSE (GB)), Great Britain’s work health and safety regulator examined attitudes to risk in the agricultural industry in that country.¹³ It found that attitudes to risk have broad age categories, with the risk takers being more likely to be aged over 65. They are more likely to see accidents as inevitable. Many were actually described as enjoying taking risks. Another group, described by the researchers as “unclear”, were relatively cautious, but also think accidents are inevitable. This group exhibited riskier behaviours, including working when tired or ill. They have the most accidents and near-misses. This group is least likely to seek advice about safety. They are more likely to be over 55.

Between them, the risk takers and “unclear” groups made up 41 per cent of the farmers studied.

Two other groups, named “planners” and “pragmatists” by the study, were more cautious. They worry about the consequences of accidents and are less likely to see unsafe behaviour as justifiable. The pragmatists do not think accidents are inevitable, they exhibit safe behaviours and do not tend to take risks to save time. Between them, these two groups are likely to range in age from 45 to 64.

Men were found to be far more likely than women to engage in risky behaviours.

The 2017 HSE (GB) research also found that a large proportion of farmers are more worried about the safety of others than for their own safety. Therefore they took on the riskiest tasks themselves rather than asking others to do it. (This was strongly reflected in the stories told by those in the community engagement of this Inquiry – some farmers will use machinery they know to be unsafe, but will not allow their workers to use it because it is unsafe.)

In 2019, the HSE (GB) undertook further research into the culture and characteristics of the farming community.¹⁴ Its findings included descriptions of the characteristics and culture within farming. These include that farming is viewed by many as a way of life, not just a job. This view was widely expressed by farmers participating in the community engagement. This was particularly strong amongst smaller family farm operators, who see the farm as an extension of the family and less as a business. The larger, corporatised group is more likely to view farming as a business, which has a lifestyle component.¹⁵

11 *Constraints on the adoption of safety measures on Australian farms, Journal of Occupational Health and Safety Australia and New Zealand, vol 14 no 5, 1998, p449.*

12 *Inquiry into the Causes of Fatality and Injury on Victorian Farms, Final Report, August 2005, par 5.12.*

13 *Health and Safety Executive, Summary Report, Agricultural Sector, Farmers and Agricultural Workers, Safety and Attitudes to Risk, research, July 2017.*

14 *Health and Safety Executive (GB) (HSE), Summary Report, Appreciation of Risk Research, March 2019.*

15 *HSE (GB) Summary Report, Appreciation of Risk Research, 2019, page 4.*

Particularly relevant findings of the 2019 HSE (GB) research are that:

“the norms and accepted practices within the farming community can have greater traction than externally imposed standards. Within this farming culture a degree of risk-taking is the “norm” and the culture both drives and reinforces risk-taking behaviour amongst farming and farm workers.”¹⁶

Other key findings of the HSE (GB) 2019 research are that farmers:

- take pride in their farm “craftmanship”;
- take satisfaction in their wide range of skills and their ability to tackle a wide range of tasks;
- believe in their strength, resilience and self-sufficiency; and
- have a high level of confidence in their own competence.

This combination of characteristics leads a large cohort of farmers, particularly men, to believe they can manage a degree of risk without consequences, and that a degree of risk-taking is part and parcel of farming. Other research called this the “illusion of control”, where the individual believes they can ensure a positive outcome through their own experience, prowess or competency and they may therefore take more risks.¹⁷

The 2019 HSE (GB) research also found that a number of factors reinforce risk-taking behaviours:

- “getting away with it” many times before without adverse consequences, that is, judging the quality of the decision by the experience of the outcomes. Many in the community consultations and submissions referred to having done the same thing many times before and that it was only a problem when the risk eventuated. WorkSafe Victoria has a very affecting video entitled “It’s never you, until it is”, aimed at dealing with this approach).
- The cultural norms that drive risk taking in the first place. Some farmers see taking risks as a way of reinforcing their identity as a farmer and sense of belonging to the farming community.
- “A fear of the consequences of not conforming to the farming cultural norms”, of standing out from the crowd, resulting in feelings of humiliation and fear of rejection from the group. The researchers noted that:

“for farmers and farm workers, whose identity and allegiance is very tied up in being a farmer and part of the farming world, this can be a daunting thought; both emotionally and practically. For farm workers compliance with the cultural norms around risk-taking can be essential to secure and maintain their income. For farmers especially, being respected in their community is very important.”¹⁸

16 HSE (GB) Summary Report, *Appreciation of Risk Research*, 2019, page 4.

17 McKenna, F.P. (1993) *It won’t happen to me: Unrealistic optimism or illusion of control?*, *British Journal of Psychology*, 84,39-50.

18 HSE (GB) Summary Report, *Appreciation of Risk Research*, 2019, page 8.

The researchers described the explanations given by farmers for their risk-taking as being “rationalisations”. These included:

- the unpredictable nature of farming, and the degree of risk being inevitable, that it is not practically possible to manage out the risks;
 - they found reasons to explain accidents that happened to other farmers that did not apply to them.
- **Attitudes to risk in the industry in Western Australia**

The community engagement in this Inquiry reflected a number of the Victorian and HSE (GB) research findings.¹⁹

There were many expressions of concern for the attitudes and safety of the older men in the industry; that our society generally does not want to acknowledge that ageing brings reduced physical strength, agility, flexibility, reflexes and reaction times. Many people in the industry have suggested that given the characteristics of farmers, there needs to be cultural change to enable older farmers to recognise and accept the consequences of ageing, that it is not personal, nor is it their fault. They need to be encouraged to adjust the work they do and how they do it to take account of these changes. This includes doing less physically demanding work and being more attentive to risk.

Some WA farmers’ attitudes towards risk also include, for example:

- the wearing of personal protective equipment (PPE), such as helmets rather than hats;
- beliefs in their own ability to manage risk;
- the need to fit into the farming culture;
- the rationalisation of incidents.

(ii) Attitudes to safety regulation and compliance

There has been some very useful research into attitudes to safety regulation and compliance both within Australia and internationally, by the agricultural industry.

That research includes a finding that where regulators use inspections, and the inspector and the organisation view the inspection as a problem-solving opportunity, it has a positive impact on safety.²⁰

Interestingly, the public engagement in this Inquiry suggests that there are still farmers in Western Australia who believe that farms are not subject to work health and safety regulation or, if they are, it is only in respect of paid workers and not the owner-operator farmer or the family. They view the farm as being about family and a way of life rather than a business. An inspector explained to this Inquiry the need to regularly remind farmers to put the “business” back into the family farm for the purpose of looking at safety.

19 See Appendix 1 - Insights, experiences and views from the agricultural industry during community consultation meetings.

20 *Something to Think About – Motivations, Attitudes, Perceptions and Skills in Work Health and Safety – Review of the Literature on Socio-Psychological Factors and Their Influence on Organisations’ and Individuals’ Responses to Regulation, August 2011, p112.*

The Victorian R&RS Committee report noted that a number of witnesses told the Committee that farmers, as a whole, were generally reticent towards any prospect of increased regulation or legislation that would affect the way activities were managed on their properties; that farmers were “accustomed to being left to their own devices”, and that “there was a perception within farming communities that measures used to improve farm safety are punitive, expect onerous documentation and intrusive.”²¹

In regard to regulation and enforcement, the R&RS Committee noted that “some witnesses suggested that occupational health and safety regulations were better suited to big businesses than small businesses, and that all small businesses, including most farms, faced impediments regarding expertise in risk management, bureaucratic requirements and so on”.²² There was a view that “the issues surrounding safe practices on farms have unique characteristics and that this warranted special consideration for the industry.

I examine in more detail later in this Report aspects of attitudes to compliance and the actions available to regulators.

2.2 WorkSafe as an organisation

2.2.1 History – the *Coming home safely* report

The term *WorkSafe* is used by many to refer to what was once a separate agency with the Western Australian public sector. There is no longer such an agency.²³ In my view, some of the issues arising in this Report may have at least part of their basis in this situation.

In June 2017, the Parliament of Western Australia, Legislative Council Standing Committee on Public Administration (the Committee) commenced an inquiry into what was referred to as WorkSafe’s performance against the objects of the Act then governing work health and safety, the *Occupational Safety and Health Act 1984*, and its funding and resourcing. The Committee issued its report in August 2020 (the *Coming home safely* report).²⁴

The Committee noted the history of the agency, once known as WorkSafe, and that it no longer ultimately existed. For clarity, I note that despite this finding, the Committee continued to refer to the State’s work health and safety (WHS) regulator as “WorkSafe”. It traced the structural changes over the years which had led, ultimately, to the staff, previously designated as being WorkSafe staff, being spread throughout the Department of Mines, Industry Regulation and Safety (DMIRS). It noted the progressive erosion of the direct support provided to the Commissioner, and there being no central focal point other than through layers of reporting lines. It recorded that in December 2018, there was a new, operationally independent Commissioner, but that staff carrying out WorkSafe functions reported through departmental managers to the Director General of DMIRS, not to the Commissioner.

The arrangements for staffing and resources have been through a Memorandum of Understanding between the Director General of DMIRS and the Commissioner. While the Commissioner described the arrangement as cooperative, the Committee reported that overall, WorkSafe provided evidence that its total funding had decreased from \$22.7 million from 2011-12 to \$19.8 million in 2019-20.

21 *Inquiry into the Causes of Fatality and Injury on Victorian Farms, Final Report, August 2005, par 5.14.*

22 *Inquiry into the Causes of Fatality and Injury on Victorian Farms, Final Report, August 2005, par 5.18.*

23 *Despite this, the WorkSafe name has continued to be used to refer to those aspects of the regulator’s work within the government departments which house the regulator. The logo is also still used.*

24 *The Parliament of Western Australia, Legislative Council, Standing Committee on Public Administration, Report 31, Coming home safely: WorkSafe and the workplace culture in Western Australia (August 2020).*

The *Coming home safely report* said that it was regrettable that there was no longer a WorkSafe Division of what is now DMIRS. It said this sent the wrong message to recalcitrant employers. It also noted that:

“the lack of visibility of WorkSafe inspectors at workplaces is an issue that was raised by a number of submitters to the inquiry, as was the lack of advertising by WorkSafe, resulting in poor public recognition of its role. Public recognition of the statutory regulator’s role and identity is of great importance.”²⁵

The *Coming home safely report* recommended that the State Government take steps to establish WorkSafe as a public sector body, with its own publicly recognisable identity and comprising all former WorkSafe staff.²⁶ Additional funding was to be provided to increase the number of investigative staff, much of that to overcome reductions that had occurred over the last few years, but also to account for a number of changes within the requirements for investigations. (I note later in this section of this report that as of December 2022, DMIRS is to establish the ‘WorkSafe Group’ within the Department. While it is not a separate public sector body, it will bring together the staff who undertake WHS regulatory duties, and will be an identifiable group.) The *Coming home safely report* also recommended a significant increase to WorkSafe’s funding.

2.2.2 Allocation of resources

The allocation of resources to the work of the regulator; the allocation of inspectors amongst industries and the division between investigation of WHS incidents and inspection of premises and work within DMIRS is far from clear. It seems that over the decades, when a particular industry or issue has arisen, adjustments are made and resources are allocated and later reallocated. There is no particular formula for that allocation, but a general weighing of various considerations at the time. It has also meant removing resources from one sector which might still need those resources, to deal with a more recent and perhaps more pressing issue.

It has also been difficult to identify the exact number of inspectors currently employed on investigation and inspection work for the agricultural industry. For example, a recent review of the issues arising in the public sector, including psychological issues, has seen a focus on that area of work and an allocation of resources in that direction within DMIRS.

The *Coming home safely report* noted the need for increased resources to alleviate some of the burden on the inspectors undertaking investigations. Over the last few years, on paper, the number has increased by almost 50 per cent to 130 inspector positions.

Other issues in respect of the allocation of resources include that the construction industry is one of three industries, including agriculture, with the most safety issues. Around six to eight of the new inspectors appointed since 2020 were appointed to the construction industry. Inspectors working in the construction sector have a broad range of skills in dealing with risks that arise in other industries, including agriculture. However, they are not always familiar with the issues that arise in agriculture.

²⁵ *Coming home safely report*, par 3.16.

²⁶ *Coming home safely report*, Recommendation 3, page 32.

The range of factors taken into account in determining the allocation of resources, apart from dealing with issues that have arisen, is consideration of data provided by WorkCover about workers' compensation claims. This data, along with DMIRS' own data, affects the allocation of resources. This data is collected and analysed by reference to the ANZSIC codes. As I note in respect of Term of reference (c) in this Report, the ANZSIC codes are the basis for much of DMIRS' resource allocation.

(i) Under-reporting of serious injuries

Part of the difficulty for the agricultural industry in terms of the allocation of resources by DMIRS is that in speaking with a number of agricultural industry people during the consultation process, there is a strong indication, without specific evidence, that there is likely to be a gross under-reporting of serious injuries to the regulator and a lack of claims for workers' compensation. Many owner-operators, particularly in the smaller businesses, either make the best of the situation and perform what work they can while they recover, or work is simply deferred. I have heard stories of farmers continuing to drive equipment with a broken foot or leg propped up, or of driving one handed, to ensure that work is performed where it is urgent. This is part of the culture of self-reliance within the agricultural industry.

Where owner-operators might need to take time off work and engage other workers, they might claim on private accident or injury insurance rather than through the workers' compensation system.

The view expressed by some in the agricultural industry was that if they were workers, not owners, or if they were in another industry, those injured or unwell workers would be more likely to report their injuries to the regulator and/or claim workers' compensation through WorkCover.

Only an increased awareness of the obligation to report serious injuries, an improved relationship between farmers and the regulator and cultural change will make reporting more normalised. It is unlikely, given the culture of the industry and the attitude of many to the regulator, that an enforcement approach for non-reporting would be a successful motivator for those injured to report. Also, there is an incapacity within the system to even identify who might have been injured unless they report it themselves.

One way to obtain better data on serious injuries would be for a mandatory reporting system for hospitals to be instituted. Given the reporting burdens already placed on hospitals, this is unlikely to be an additional reasonable requirement specifically for farmers.

The lack of claims for workers' compensation by owner-operators and their families has a flow-on effect to the allocation of resources by DMIRS and the regulator. In this way, the agricultural industry has not attracted the resources of DMIRS in a way that it might had there been a greater reporting and workers' compensation claims made.

(ii) Travel for inspections

A further issue for the agricultural industry in respect of resources within the Department is travel costs. While this may appear to be a simple issue, it has not been addressed. To visit farms, inspectors need to travel significantly further than for industries that are located in and around towns and cities. If the inspectors are travelling any significant distance, which may be necessary to visit farms, an overnight stay might make it possible to visit a number of farms. However, with insufficient resources to undertake travel for the purposes of inspections, work is done in other industries because it is more convenient and less costly. In the scheme of things, an increased budget for travel costs is an easier option than many others.

There is also an issue of culture, accountability and attitudes displayed by some, but by no means all, inspectors about travelling long distances and possibly staying away from home overnight to undertake inspections of farms. An inspection of a business in town, near the office, or in the town's light industrial area on the way home from work is seen as preferable.

2.2.3 Placement of inspectors

The WorkSafe Commissioner takes the view that placing single inspectors in regional locations, where they are working alone and without support, is undesirable. It is preferable if they can be located in a regional centre, with other departmental staff who may or may not include inspectors.

Western Australian Governments over many years have consolidated government services into larger regional centres and closed smaller offices. This has affected the capacity of those smaller towns and regions to support a lone inspector. This can be seen to have been both for budgetary purposes as well as for the protection and benefit of the inspectors, but also to ensure that they are able to work with others and maintain an appropriate relationship with those in the area who they are regulating.

However, in my view, part of the overall effect has been to distance inspectors from the agricultural industry and to make engagement with the industry harder.

2.3 Current situation regarding "WorkSafe"

Given the restructuring and the movement of positions within DMIRS and that WorkSafe no longer exists as an entity, staffing levels, positions allocated and the resources available to WHS regulation have not been able to be identified.

By the commencement of this Inquiry, there was a statutory position of Commissioner which had responsibilities under the WHS Act, but which:

1. had no direct staff;
2. had to rely on the allocation of resources from DMIRS; and
3. to obtain resources and to set priorities, was required to negotiate with DMIRS.

In a very positive development aimed at overcoming the issues identified by the Committee and said to be driven by the commencement of the new WHS Act regime, DMIRS is currently proceeding to create a "WorkSafe Group" within the department, reporting to the Commissioner both in terms of compliance work and also for other departmental purposes.

2.4 Agricultural industry activity

In recent years, DMIRS has undertaken very little proactive activity in the agricultural industry. This is particularly noteworthy when compared with the resources allocated to other industries and given that the agricultural industry is the most dangerous by a large margin.

Between 2017-18 and 2018-19 there were 46 proactive campaigns and proactive investigations by WorkSafe inspectors.²⁷ Of those, only one related to the agricultural industry, in grape growing in regional areas, to focus on priority hazard areas and industry specific hazards. This proactive engagement continued over the two-year period. The total number of investigations in this campaign was 33, with 151 improvement notices and no prohibition notices issued.

By contrast, in the period 2017-18 and 2018-19 the construction industry was the subject of a total of 3,202 proactive campaigns and proactive investigations. Of those, 2002 were undertaken in the metropolitan area, 964 in regional areas. There were 229 in scaffolding and seven in wall-chasing.

Yet agriculture is the industry with the highest number of fatalities, followed by construction and mining.

I sought information to update the 2017-18 and 2019-20 data. However, for a number of resourcing reasons it has not been available.

This lack of proactive work was also part of a significant general decline in overall proactive and reactive inspections over a significant period. Inspectors are conducting fewer proactive inspections because they are focussing on key areas in their WorkSafe priority checklist and this results in more improvement notices being issued at each workplace. This is said to result in greater quality of inspections. Various reports and research, to which I refer later, recognise that proactive inspections are the most obvious and effective way for a regulator to achieve compliance with the regulatory scheme, in this case, with the objects of the Act, "prevention rather than cure". It seems that a lack of resources prevents more such activities.

The *Coming home safely report* recommended that the State Government provide DMIRS with additional positions above and beyond the 27 extra staff announced in 2019 so that it might be able to more adequately meet community expectations.²⁸ It also expressed the view that even this number of inspectors was too few. It also expressed the view that DMIRS "should re-establish its North-West offices in Broome and Karratha, and adequately resource those offices with inspectors."

²⁷ *Parliamentary inquiry into WorkSafe (Coming home safely: WorkSafe and the workplace culture in Western Australia, Report 31 - Standing Committee on Public Administration, August 2020, pages 255-258.*

²⁸ *Coming home safely report, Recommendation 8, p45.*

2.5 Current allocations

A significant number of additional inspectors have been appointed since 2020. It was intended that they would improve DMIRS' capacity and assist in ameliorating stress felt by the inspectorate staff. Eighteen were to be allocated to the metropolitan area, eight to the Investigations Directorate, four to the Service Industries and Specialist Directorate, and nine to the Industrial and Regional Inspectorate. The Industrial and Regional Inspectorate includes a number of teams. Of that nine, only two extra were to be based in the regions, one extra each to Albany and Geraldton. This increased number would allow for a reduction in the need for secondments of inspectors from the Service Industries and Specialist Directorate and the Industrial and Regional Inspectorate.

So, the great bulk of the increased numbers of inspectors have been added to the Investigations Teams to investigate WHS incidents, that is reactive work, not to the inspector positions undertaking proactive regulatory work.

The WHS regulatory work within DMIRS is divided into three Directorates:

- Industrial and Regional Directorate;
- Service Industries and Specialists Directorate; and
- Investigations Directorate.

Each Directorate is divided into teams. As at September 2022, those teams each had a nominal number of inspector positions.

- Industrial and Regional Directorate
 - Construction Team – 16 inspector positions
 - Industrial – 12 inspector positions
 - Regional and Primary Industries – 9 inspector positions. This is the team primarily responsible for the agricultural industry.
- Service Industries and Specialist Directorate
 - Occupational Health, Hygiene and Noise Team – 4 inspector scientific officer positions and 1 inspector occupational nurse position.
 - Plant and Engineering Team – 8 inspector engineer positions
 - Public Sector and Related Industries – 10 inspector positions
 - Asbestos Team – 5 inspector scientific officer positions
 - Human Factors and Ergonomics Team – 7 inspector scientific officer positions
 - Retail and Service Industries Team – 8 inspector positions
- Investigations Directorate
 - 6 General Industry Teams of inspector investigator positions totalling 45 positions
 - Mining and Critical Risks Investigation Services, including Dangerous Goods – 8 inspector positions
 - 2 Triage Notification Investigations Teams, one of which is allocated to the Resource Industry, with a total of 4 Senior Inspector positions.

Generally speaking, the proactive work of inspections and advice is performed by the members of the first two Directorates, and the reactive work of investigations is performed by the Investigations Directorate. However, there are occasions when inspectors in the first two Directorates are called on to do investigative work in response to an incident. This is particularly so in the regions.

The Team which mainly deals with the agricultural industry in the southern part of the state is the Regional Team. This team does almost all inspectorial work in the regions. I am informed that this includes inspections in industrial, retail, wholesale, local government as well as agriculture industries. The regional inspectors are located in Bunbury, Geraldton, Albany and Perth. Any issues in the mid-west, inland and the north are dealt with from Perth. An inspector in Perth deals with the horticultural industry.

The regional inspectors are often called upon to assist with investigations of incidents. They have told this Inquiry that their work is almost exclusively reactive, responding to reports of incidents.

Therefore, there are nominally nine inspectors available to do proactive work in the agricultural industry, along with their work for other industries, as well as investigations work. Given that there are more than 5,700²⁹ agricultural enterprises in Western Australia, their task is overwhelming.

[Appendix 2](#) is a list of activities undertaken by DMIRS in the agricultural sector in the last two years. It shows that these activities can be broken down into two types:

- campaigns of inspections involving compliance tools being used, such as improvement and prohibition notices being issued; and
- advice, information and materials development and engagement with industry groups such as making presentations.

The campaigns of inspections have been few, with no more than one per year. Most work is aimed at providing information and services, either from the office or in meetings of farmer groups.

Overall, activity in the agricultural industry is ad hoc and reactive. A particular inspector appears to undertake the great bulk of the proactive interactions with the agricultural industry. The inspector also has other industry allocations.

2.6 Previous WA plans

The agricultural industry in Western Australia has been the subject of attention and good intentions by the government agencies and bodies responsible for WHS.

- (a) In around 2013-14, the then WorkSafe Division of the Department of Commerce issued the *Agricultural Action Plan 2014-2016*.³⁰ This plan set out targets and strategies to be adopted by WorkSafe and the industry aimed at reducing the number of fatalities by at least 20 per cent and a reduction in the rate of claims resulting in one or more weeks off work of at least 30 per cent. The time frame for these targets to be achieved was 2022. It is clear that some of the strategies were adopted. However, I am unable to find a replacement or updated plan, and it seems that the attention to the industry has not been sustained in any planned or structured way.

²⁹ Department of Primary Industries and Regional Development, *Research Highlights, Farming Systems Report*, by Dr David Ferris.

³⁰ *Strategy to reduce the number of serious injuries and fatalities in the Western Australian agricultural sector*.

- (b) In January 2022, the Commission for Occupational Safety and Health commissioned a study of the views of the industry, which reported in March 2022.³¹ It made a range of recommendations that are reflective of many of the views expressed to this Inquiry from the submissions and community consultation meetings.

This industry engagement involved telephone interviews of 18 industry representatives. Prior to the interviews, each received an introductory note with a series of questions. Those representatives were from a variety of organisations as well as one pastoralist. The *Industry Engagement Report* made a number of useful and pertinent observations. They include that:

- farm lobby groups involved in the Industry Working Group (IWG) find it challenging to make progress on farm safety because their members expect them to focus on more productive industry issues;
- older farm machinery and equipment poses the biggest safety risk;
- older farmers are in the greatest risk category for having a farm accident;
- the new legislation is lengthy and complex, and farmers find it overwhelming and are unsure where to start;
- fear of the regulator and the “big stick” are preventing engagement;
- industry groups and associations are reluctant to distribute farm safety information for fear of being held responsible and liable if anything goes wrong. Government has created a disincentive to speak out and provide information;
- the State Government wants the industry to change and the industry realises that there is an issue to be addressed, but the Government is not providing support and has sent the matter back to the industry.

With the exception of some funding to SafeFarms WA, the State Government does not fund any farm safety advice or awareness programs.

The *Industry Engagement Report* recommended the development of farm safety awareness and educational programs including:

- Create positive imagery around farm safety for the media to use that shows farmers leading by example;
- Promote peer to peer learning as farmers like to learn from other farmers;
- Profile proactive farmers/pastoralists who have adopted farm safety systems which have also had operational benefits to their business;
- Promote case studies of farmers, how to start, examples of pastoral safety, cropping focus, livestock focus, etc.;
- Utilising the experiences of farmers who have had a near miss or suffered from a farm accident to speak at farmer events to raise awareness.

In addition, a range of other measures were recommended to enhance safety. (See [Appendix 3](#) – Recommendations of the Industry Engagement Report of the Agricultural Working Group of the Commission for Occupational Safety and Health, March 2022) There is no indication of any action on these recommendations.

³¹ *Industry Engagement Report for the Agricultural Working Group of the Commission for Occupational Safety and Health, March 2022, by AgKnowledge.*

- (c) In April-May 2022, DMIRS considered a range of programs and reports to develop a plan including strategies to minimise agricultural workplace injuries and fatalities. It seems that very limited action has been taken in response.

This demonstrates that there is no shortage of information and strategies to improve safety in the industry. What remains is an urgent need to act.

2.7 Industry commitment to improved safety

The consultation process of this Inquiry has made it very clear that the industry as a whole has a commitment to improving the safety of those who work in agriculture, and is working to improve the safety of its workplaces and its workers. It is not simply sitting back and wanting someone else to do the work.

The peak bodies may not have an explicit focus on safety and some of the industry's leaders have expressed the view that the time and effort needed to promote safety in their own workplaces is a waste of time or a nuisance. A president of one of the peak bodies commented to the Parliament of WA Standing Committee on Legislation, dealing with the Work Health and Safety Bill 2019, that:

"I waste an inordinate amount of my time making absolutely certain that our workplace is as safe as it can possibly be."³²

When asked why it was a waste of time, he responded:

"Because I want to be productive."

He then said that "I am not going to call it a total waste of time, but I spend an inordinate amount of my time making certain that our workplace is safe. That detracts from my ability to do my job." He later referred to the "huge risk" that accompanies the employment of backpackers because of their limited experience. He said "I cease to be as effective as I want to be because I am constantly watching these people and making certain they do not do a dumb thing that can hurt them."³³

Later in his testimony, this person commented about a worker on his farm who had cracked a bone in his finger while working. He said that if it had been him who was injured in this way, he would have strapped it up and done light work. However this worker "got six weeks on workers' compensation".³⁴

Another industry leader referred to the cost of safety coming out of the profit margin.³⁵

³² Transcript of evidence, Thursday 9 July 2020, p6.

³³ Transcript of evidence, p6.

³⁴ Transcript of evidence, p7.

³⁵ Transcript of evidence, p3.

While calling for more safety education on and off farms, the head of another peak farming body suggested that the regulator ought to provide clarity around whether a death on a farm was work-related. He said that there was a need to be careful about (how deaths are categorised) “instead of belittling and berating farmers about every little incident”.³⁶

These industry leaders are people who ought to be actively working towards keeping themselves and their people safe and healthy, even if their motivation is to ensure maximum efficiency and productivity. They ought to be exemplars to their fellow farmers and their workers. It is hardly surprising then that the Commissioner is reported to have said that some in the industry put productivity ahead of safety.³⁷

It is also worth pointing out that in terms of the issues that adversely affect productivity, the death or serious injury of a farmer or worker probably rank very highly.

However, as I note later, many of the grassroots organisations play a very active role in education and awareness raising regarding safety in farming. Many of the improvements in practices have also come about by improved methods of production and technology but those things have also had consequential improvements for safety.

2.8 The WHS Act

The *Work Health and Safety Act 2020* (WA) came into effect in March 2022. Amongst other things it:

- expanded the duty of care of business owners;
- expanded the definition of a worker;
- significantly increased penalties for a breach of duty resulting in serious injury or death;
- introduced the crime of industrial manslaughter which may apply where a failure to comply with a person’s health and safety duty results in the death of a person, knowing that the conduct is likely to cause death and disregards that likelihood. The penalty may be imprisonment or a fine of \$5,000,000 for an individual, or a fine of up to \$10,000,000 for a body corporate.

The new industrial manslaughter provisions and the new penalties have been a double-edged sword. On one side, they have raised awareness of safety in agriculture in an unprecedented way and they have caused many farmers to seek advice and assistance from consultants and training organisations.

It has been reported by farmers that the quality of service provided by those consultants and training organisations ranges from excellent to poor. Farmers are confused and concerned about making a good choice of adviser, and about a significant cost in obtaining advice and assistance.

The other edge of the sword is that these provisions have been described as a “cudgel” and have raised fear, panic and alarm. There has been a deal of scaremongering amongst a range of people and organisations. They have used the prospect of imprisonment and large fines, firstly, to oppose the introduction of the legislation, and secondly, to tout for business.

³⁶ Interview Channel Seven News, 21 October 2022.

³⁷ ‘Productivity before safety’, *Countryman*, August 25, 2022, p6.

That fear adds to the anxiety many farmers already have at the prospect of dealing with the regulator, through inspectors. Many have expressed that fear during community engagement processes during this Inquiry and have cited their own and others' bad experiences in dealing with inspectors in the past. It means many farmers, as they have said, "keep their heads below the parapet" and avoid engagement with the regulator. This also means that they do not seek assistance or advice from the regulator because they do not wish to draw attention to themselves.

2.9 Experience of inspectors

It must be acknowledged that the job of inspector is difficult. When it comes to the agricultural industry, the inspectors are located some distance away from farming properties. Unlike those businesses where they are able to make unscheduled visits in cities and towns, making an unscheduled visit to a farm is not viable. The inspector may travel a number of hours only to arrive to find no one is immediately available because they are out in the paddock, off at saleyards or away from the farm for any number of reasons. So, prior appointments need to be made for inspections.

Inspectors tell tales of the farmer being very defensive, and on occasions, being aggressive.

On the other hand, some inspectors are reported as being known to carry their authority with a heavy hand, and can be overbearing and unhelpful. A number of inspectors, too, have told this Inquiry that some inspectors have a reputation for upsetting farmers.

"Previous interaction with WorkSafe have left many farmers reporting feelings of animosity and distrust towards inspectors and their Department as a whole. Relationships will need to be rebuilt based on trust, openness and transparency, dispelling the belief that WorkSafe inspections are carried out just to penalise the worker."³⁸

The attributes of an inspector may be varied, but the willingness and ability to be helpful is not the norm in the experience of many in the industry. However, I have regularly heard high praise for a particular inspector, who while not shying away from utilising compliance tools where necessary, recognises that most farmers are doing their best and readily provides well-received advice. In the agricultural industry, farmers respect someone who has knowledge and understands the unique issues they face, and will not only willingly follow the advice given, but will seek it out from a respected advisor. One member of a farming family said she had no experience or knowledge about work health and safety when she recently took on that responsibility for her family's farm. However, she said she had no hesitation in contacting this particular inspector for advice.

38 Project proposal: Safety initiatives for the agricultural industry in Western Australia, 2022, DMIRS.

2.10 Industry progress toward safety

I acknowledge and encourage those many individuals who and organisations which dedicate a great deal of time and resources to the safety of the people in the industry. Through these people and organisations, a good deal of change has and is taking place in attitude and practices.

The Grower Group Alliance has over 60 member organisations in the industry, covering over 4,000 farming enterprises. The member organisations range from groups of farms that are geographically centred, based on product, or on a particular interest such as land care. It includes Women in Farming Inc, which has over a dozen branches. One of its interests is safety on farms.

Other industry organisations include not-for-profit organisations, which provide workshops, webinars and other educational resources. Safe Farms WA has three part time staff to enable it to do its work. DMIRS has provided \$70,000 per annum in funding to Safe Farms WA however it says that it needs considerably more to do its job.

Rural Edge is also a not-for-profit organisation providing training and programs to the industry.

A number of other industry groups have undertaken a good deal of work in pursuit of safety, for example:

- In 2020, the WA Shearing Industry Association (Inc), in conjunction with Australian Wool Innovations Ltd, developed its Safe Sheds program. This aims to improve the work safety of shearers by farmers and shearing contractors working together to ensure that shearing sheds are safe structures and that shearers apply safe work practices;
- Vegetables WA aims to improve safety through, amongst other things, the engagement of a Vietnamese liaison officer to improve communication with horticultural business owners and their workers;
- Wines of WA, the wine industry association, developed what it calls its code of practice for safety and health in the wine industry;
- Since 2020, Grain Growers Australia Ltd, has produced a Farm Safety Workbook for growers, identifying hazards relevant to that sector and checklists for particular issues.

There are commercial consultants, advisers and trainers working with the industry. Some of these businesses provide exceptional training, education and consultation services. Their businesses have rapidly developed resources to attempt to meet the increased demand that has arisen in the last year.

Government agencies are also providing some support to educate and train the agricultural industry, such as:

- the Department of Education, WA Colleges of Agriculture, at Cunderdin, Denmark, Harvey, Morawa and Narrogin. These provide education to agricultural students in years 10, 11 and 12. In 2019, the Department of Education increased its focus on safety in the agricultural colleges, with assistance from the resources of Safe Farms WA, and its community consultation mechanisms.
- TAFE, particularly South West Regional TAFE, which provides certificate and short courses in a wide range of agricultural safety skills, from its campuses in the south west region.

It is clear then that there is a significant interest in safety within the agricultural industry. Part of the difficulty is that many in the industry, particularly the businesses with very low numbers of workers, often do not even know where to start in approaching the new legislation and the requirements on them. A couple of providers of services to the industry described many of the farm people engaged in safety as needing to be coached and to have very detailed support or “hand-holding” to help them establish correct procedures and processes.

2.11 Growing gap between groups

It is clear that there has been a growing gap between the larger, more sophisticated and professional agricultural business and many of the smaller operations. Financial investment makes an enormous difference to safety. The huge uptake in technology is increasing the divide between the small farm segment and the larger operations. And many small businesses are overwhelmed by their new obligations.

2.12 Compliance with legislative scheme vs safe practices

Many businesses in the agricultural industry distinguish between putting safer systems and practices in place and meeting their compliance obligations under the legislation. They see this differentiation as being a reflection of the need for them to raise their awareness and improve their safety but find that the administrative requirements of compliance and of demonstrating compliance to be a real burden, and they fear getting it wrong. They may have checklists, policies and procedures, but the community consultation process showed that some simply go through that process once then file the paperwork in the cabinet. The significant part for them is the actual safe practices and safety consciousness. They believe the regulator’s focus is on compliance with processes and enforcement rather than actual safety education and practise.

2.13 Conclusion

There are many reasons behind the current safety situation within the agricultural industry in Western Australia. Some of those reasons relate to the attitudes of some farmers, and to the circumstances of the regulator.

However, the great bulk of the industry is working towards their farmers and workers being safe. They need leadership and support from their industry groups as well as from the Western Australian Government and the regulator.



Section 3: Terms of reference

3.1 Term of reference (a)

The circumstances of all deaths and serious injuries in the agricultural industry in Western Australia for the five years to 30 June 2022.

Too many people lost their lives and many more were seriously injured in incidents in Western Australian agriculture. Most of these incidents were work related, some were not, and for others, it is not readily identifiable whether at the time of the incident the person was actually working. In any event, the incidents took place on property utilised for agriculture, or were related to agricultural activities.

3.1.1 Fatalities

It is important to note that clear information about the circumstances leading up to fatalities is not always readily available. Some of this is due to the deceased person being alone at the time of the incident; the matter being subject to ongoing investigation; and given the potentially serious consequences, the lack of information being forthcoming from witnesses by involuntary interviews.

In examining the fatalities in the agricultural industry in the last five years to 30 June 2022, I have had the benefit to access the investigation files of DMIRS.³⁹ Those investigations were of deaths that occurred on or adjacent to agricultural property. Some investigations, as I noted above, are not complete so all details are not available. I have excluded those fatalities where the incident was categorised by investigators as not being work related or for some other reasons. The reasons included that:

1. The deceased was not performing work at the time, including hobby farming;
2. The incident was a road traffic crash unless it had an agricultural connection;
3. The person died of natural causes or took their own life.

Some of the deaths from natural causes occurred at the workplace but were not actually work related. However, it is important to note that some fatalities that have occurred on agricultural properties, even if the person was not actually performing work at the time and thus was not work related, may still involve similar causes to those which involve paid work, such as where vehicles or dams are used for recreation.

³⁹ DMIRS compiled a file of fatalities reports for me as to examine. I assumed that the fatalities were all within the Agriculture, forestry and fishing Division ANZSIC code, and were work related. However, they included two abattoir fatalities, yet abattoirs are classified under a different ANZSIC division. They also included non-work related deaths and some deaths by natural causes. This makes proper statistical analysis difficult. They also included two fatalities arising in the forestry industry, where drivers died in vehicle crashes. Otherwise all of the fatalities occurred with the Agriculture and Support Services subdivisions of the Agriculture, forestry and fishing Division.



Farms are not only workplaces but also contain the homes of farmers. The line between the home and the farm is regularly blurred. The equipment and infrastructure is sometimes seen as being fun, and visitors and children are, at times, allowed to use the equipment without being properly trained or supervised. There have been a number of deaths involving children and visitors using equipment, vehicles, dams, and coming to grief.

The following circumstances have been identified in fatalities occurring in WA in the last five years.

2017-18

1. On a mixed stock farm, a worker was crushed by a bull.
2. A person died from multiple bee stings on a mixed crop and livestock farm.
3. On a grains farm, a worker was crushed by a tractor he was working on.

2018-19

1. An arborist was crushed by a tree.
2. On a sheep farming property, a worker crashed a quad bike and died of neck injuries.
3. A worker was crushed between a tractor and trailer. It appears there was a lack of communication between the worker and the driver of the vehicle.
4. On a mixed crop and livestock farm, during a dredging operation, a worker was struck by a truck, once again with a lack of communication between the driver and the deceased person.
5. On a livestock farm, a person died from head injuries, following a quad bike crash. The worker was not wearing a helmet.

2019-20

1. On a grains farm, a person died in a utility roll-over in a paddock.
2. On a cattle farm, a bystander (family member) was run over by a reversing utility when the driver did not know the deceased had moved behind the vehicle.
3. During shed construction, a worker fell from a roof. There was no safety equipment in use.
4. A worker on a dairy farm died from multiple bee stings.
5. On a sheep farming property, a worker was crushed after losing control and falling from a quad bike. There was no safety equipment in use.

2020-21

1. A truck driver, carting water from a farm dam for road maintenance, died when the truck rolled over.
2. A berry farm worker was entangled in farm equipment and died.
3. A worker riding a motorcycle crashed into a thin wire fence across his path and died from head injuries. He was not wearing a helmet.
4. On a strawberry, berry or turf farm, a worker was struck or crushed under the chassis of a tractor, while working alone.
5. A dairy farm worker was either crushed or trampled by a bull or died from natural causes and was subsequently crushed.
6. On a grains production farm, a worker was struck by a seeder during repairs/ maintenance. Once again there was a lack of communication with, or the person was unsighted by, the driver.

2021-22

1. On a cattle property, a worker crashed a mustering vehicle. It is not clear if he was performing work or taking a break at the time as he was alone.
2. On a grains property, during the construction of a shed, a worker fell and died.
3. A worker was attempting to jump-start a tractor and was run over by the tractor.
4. On a pastoral station, while working on a family home, a young man was struck by shifting infrastructure and died of head injuries.
5. On a cattle farm, a worker fell or was thrown from a quad bike. Although the investigation is not complete, he may have died of head injuries. He was not wearing a seatbelt or helmet.
6. On a sheep property, during shearing, a shearer was crushed by the wool press.
7. On a livestock property, a bystander was struck by a tractor. It appears that the tractor driver moved the tractor when a bystander was unsighted and the bystander had unexpectedly moved his location.
8. A water truck driver for road works was filling a water tank on a rural property and drowned while retrieving something from the dam.
9. On a cherry farm, a worker was trapped under a bucket under a skid steer vehicle when removing tree branches.
10. On a public road, a truck was overtaking wide farm machinery and collided with the machinery. The truck driver died from the collision.
11. On a sheep farm, a worker riding a quad bike was killed. He was wearing a helmet. The cause of death has not been determined.
12. On a grains producing property, in retrieving a bogged vehicle, a worker was struck by a piece of metal and killed.

It is clear then that there are a number of common causes including a lack of use of safety equipment and personal protective equipment (PPE), use of unsafe methods, a lack of attention to the positioning of bystanders or other workers, as well as a number of other causes.

During the community consultation meetings, when the numbers of fatalities and their circumstances were discussed, a number of people sought to distinguish between activities and fatalities by reference to whether they occurred on a productive commercial property as opposed to a hobby farm; whether they could be better characterised as traffic crashes, construction work, or activities such as shed building by external contractors, and whether they were associated with recreational activities. Those distinctions may have some relevance where the jurisdiction of the regulator is a live issue. However, the types of incidents that were attempted to be distinguished are also mirrored in fatalities on commercial properties, while work is being performed, or they occur when farm machinery is being moved across or along a public road to another part of the property, as part of the commercial activity of the business.

Even if those fatalities are excluded, the data shows that:

1. approximately 90 per cent of fatalities were of men;
2. nearly half were of men aged over 55;
3. in descending order, the circumstances involved;
 - (a) being crushed or struck by a tractor or other large machinery which was either being repaired or it was idling while awaiting engagement of the gears;
 - (b) a quad bike crash resulting in the driver being crushed and asphyxiated, or having head or neck injury;
 - (c) a vehicle roll-over or crash, or a vehicle being reversed or moved and crushing an unsighted bystander;
 - (d) being crushed by livestock;
 - (e) falling from the roof of a shed under construction.

The remainder of fatalities involved two people dying after multiple bee stings; a person being caught up in farm equipment; being crushed by a wool press; crashing a motorcycle by running into a fine wire fence and having head injuries; drowning in a dam while attempting to retrieve an item; being hit by metal when a snatch-strap ripped a tow point from a vehicle in a bog retrieval.

These incidents occurred on cattle, sheep, cropping, dairy and fruit producing properties.

Two of the most common circumstances of a person being crushed or struck were where:

1. a person was working alone on a tractor and undertook some diagnosis or repairs while the tractor was believed to be in neutral;
2. when more than one person is working around machinery, the people are not communicating and the driver loses sight of a person on the ground.

In addition to these circumstances are the deaths that occur on hobby farms, on public roads or when people inappropriately use farm equipment for recreation and fun when they are not trained; may be intoxicated or fatigued or allow children to ride on or in equipment.

3.1.2 Serious injuries

Workers in the industry have also experienced many serious injuries and illnesses. According to s. 36 of the WHS Act, serious injury or illness means:

“an injury or illness –

- (a) that requires the person to have immediate treatment as an in-patient in a hospital; or*
- (b) that requires the person to have immediate treatment for –*
 - (i) the amputation of any part of the person’s body; or*
 - (ii) a serious head injury; or*
 - (iii) a serious eye injury; or*
 - (iv) a serious burn; or*
 - (v) the separation of the person’s skin from an underlying tissue (such as degloving or scalping); or*
 - (vi) a spinal injury; or*
 - (vii) the loss of a bodily function; or*
 - (viii) serious lacerations;*
- (c) that requires the person to have treatment by a medical practitioner within 48 hours of exposure to a substance; or*
- (d) that occurs in a remote location and requires the person to be transferred urgently to a medical facility for treatment; or*
- (e) that, in the opinion of a medical practitioner, is likely to prevent the person from being able to do the person’s normal work for at least 10 days after the day on which the injury or illness occurs,*

and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.”

Both the death of a person and a serious injury or illness of a person, along with dangerous incidents, are incidents required by s. 38 of the WHS Act to be notified to the regulator.

DMIRS was able to provide data on serious injuries through information provided by WorkCover about claims for workers’ compensation. This data shows the following circumstances of serious injuries and illness in the five years to 30 June 2022. As noted earlier, the information provided to this Inquiry by farmers in community consultation meetings and other discussions strongly suggests that many farmers do not report serious injuries to the regulator, nor do many owner-operators claim workers’ compensation for their own or family members’ injuries. Therefore, these figures are likely to be greatly understated.

Table 1 Serious injuries and illness 2017-18 to 2021-22

	2017-18	2018-19	2019-20	2020-21	2021-22	Total
Beef cattle farming (specialised)	7	6	3	3	4	23
Grain-sheep or grain-beef	5	4	10	11	5	35
Sheep-beef cattle	2	2	1	3	2	10
Dairy cattle farming	1	0	0	2	0	3
Sheep farming (specialised)	1	4	0	1	1	7
Pig farming	1	1	1	0	1	4
Horse farming	2	0	3	1	0	6
Other livestock farming	6	4	9	3	3	25
Poultry farming (eggs)	1	0	0	1	1	3
Poultry farming (meat)	0	0	0	1	0	1
Vegetable growing (outdoors)	2	3	0	4	3	12
Vegetable growing (under cover)	1	0	0	0	0	1
Mushroom growing	0	0	2	0	0	2
Apple and pear growing	2	1	1	0	1	5
Citrus fruit growing	0	1	1	0	0	2
Berry fruit growing	0	0	1	1	0	2
Grape growing	1	0	3	1	0	5
Other fruit and nut growing	1	1	0	2	0	4
Nursery production (outdoors)	1	0	1	1	1	4
Nursery production (under cover)	0	3	1	2	2	8
Turf growing	0	2	0	1	0	3
Other crop/grain growing	2	4	1	2	3	12
Stone fruit growing	1	0	0	0	0	1
Total	37	36	38	40	27	178

3.1.3 First hand accounts

I have had the great privilege of hearing from four farmers about their experiences that resulted in serious injuries or near misses.

1. Ian Blayney, a farmer and former Shadow Minister for Agriculture between 2017 and 2019, shared his experiences. Ian's father was killed by a tractor on the family's farm many years ago. Ian found him. His mother was shattered. Ian described the "largish, two-man farming operation overnight became a one-man operation".

Since his career in Parliament ended, out of his love for farming and the bush, Ian has returned to farming, working on other people's properties assisting at seeding and harvesting. He has recently fallen from a truck used for fuelling machinery. He over balanced, slipped and fell. He suffered five fractured ribs and injured his shoulder. He attributes the fall to the truck not having a ladder and handrail on which to get to the top of the tank.

The ambulance could not come out to the property so he went in the ute, to Geraldton, to get medical attention. He spent three nights in hospital and five months recovering.

Ian also slipped while filling a home-made fuel trailer, wrenching his previously injured shoulder, which recovered in a day or two.

While trying to take a large auger down to a cleaning area on a farm, towing it with an old tractor, with the distraction of attempts to start the tractor, then working out the gears, he did not notice powerlines running around the part of the area through which he was moving. The auger collided with the powerlines. Ian counts himself lucky that he was not killed. He notes that any requirement to put powerlines underground around sheds may be prohibitively expensive, even on "a large, well-run, advanced farm".

2. Graeme Fry was a rural contractor, doing mainly fertilising and spraying. On the particular day, Graeme told his wife exactly where he would be working, which was not always the case as he might move from property to property during the day. He had his phone in his shirt pocket.

As he was spraying for cotton bush on steep, rough, sloping ground, using a quad bike, he turned at the top of a hill. The bike dislodged a stone, sending the bike sideways. Graeme ended up on his back with the 200-300 kilogram quad bike crushing his legs. His phone must have fallen from his pocket. He lay there, going in and out of consciousness, from around 9.30am until his wife sounded the alarm when he failed to return home at the end of the day. Because his wife knew where he would be, Graeme was located relatively easily.

When the bike was lifted from his legs, Graeme went into shock. He was airlifted to Royal Perth Hospital. There was discussion of his leg being amputated due to circulation and nerve damage. However, after 24 hours, a weak pulse returned to his leg. However, his body reacted with a massive infection in many of his vital organs. Amongst other issues, he lost his small and large intestines due to infection. His family was called to the hospital a number of times in anticipation of his not surviving.

Graeme remained in intensive care for 62 days until his condition stabilised. He then spent six weeks in the major trauma unit at RPH, and took another 14 weeks in rehabilitation to learn to walk, talk and eat again.

Graeme still has significant physical challenges arising from that incident, including difficulties obtaining and sustaining work.

3. A farmer of over 60 years told the inquiry he was aware of a fatality some years ago where the use of a snatch strap caused a tow ball on a towing vehicle to snap off and fly through the windscreen of a bogged vehicle, killing the driver.

The farmer has now told the inquiry of his own son's experience where he was attempting, alone, to tow a bogged boom spray truck with a large four-wheel drive tractor, using a 50-tonne snatch strap. The tow hook on the boom spray truck broke off, creating a sling shot effect and causing the tow hook to catapult through the rear and front windows of the tractor cab in which his son was sitting. His son told him that he had been aware that something might happen so when he applied the power, he crouched down in the driver's seat.

But for his caution, his son may have perished.

This farmer urges that either snatch straps be banned or their sale restricted. He believes they are currently for sale without proper warnings or instructions.

4. Brendan Edwards was interviewed on ABC radio during the course of this Inquiry. During that interview he told how he was seriously injured when, a number of years ago, he was having trouble starting the tractor in front of the sheds on the family's farm.

The tractor started while in gear and ran full length over him, breaking many bones while running over his body. He believed he was only a short time from death. Brendan was fortunate that, although he was working alone, he was within earshot of the house. His wife heard the tractor start, run for a short time, then the screams and went and discovered him.

Brendan kindly spoke to me after his interview. He said that people had contacted him after hearing his interview and a number of them thanked him for the reminder to take the time and to avoid short cuts. He says the shortage of staff puts pressure of people and they need constant reminders to stay safe.

I express my most sincere thanks to these people for sharing their stories. It is clear that these are incidents which, but for a number of circumstances, may have ended in fatality. An examination of the circumstances of a number of the fatalities that have occurred in agriculture in Western Australia over the last five years provides many similar situations.

3.1.4 Conclusion

While people may wish to quibble about whether certain fatalities or serious injuries ought not to be counted when fatalities or serious injuries rates are considered in the agricultural industry, there is no escaping the fact that people die in this industry, on and around farms, when they should not. People are permanently injured, maimed and theirs and others' lives changed for the worse by these incidents. These fatalities and serious injuries occur far more frequently in the agricultural industry than in any other.

3.2 Term of reference (b)

Comparing the numbers of deaths and serious injuries in agriculture in Western Australia and other industries in Western Australia, and with the agricultural industry in other Australian jurisdictions, including changes or trends over the five years to 30 June 2021.

Data for the first Terms of reference has come from a variety of different sources. Those sources all use the ANZSIC codes in some way. However, there are differences in the data collection modes between those sources. For example, Safe Work Australia (SWA) analyses data by calendar year and DMIRS does so by financial year. SWA uses the Traumatic Injury Fatalities database, which comes from three data sets. These are:

- workers' compensation claims;
- notifiable fatalities collection; and
- the National Coronial Information System (NCIS),

as well as media monitoring. The NCIS is the “central-repository of information about every death reported to an Australian coroner”, and includes non-work incidents, which is beyond the remit of WorkSafe WA.

AgHealth Australia gathers data from a broad range of sources including the NCIS and media tracking of approximately 2,500 daily, weekly and monthly publications Australia wide.⁴⁰ AgHealth says that the inclusion of non-work related incidents is important from a preventative perspective because farming has a significant family-based component.

3.2.1 Western Australia

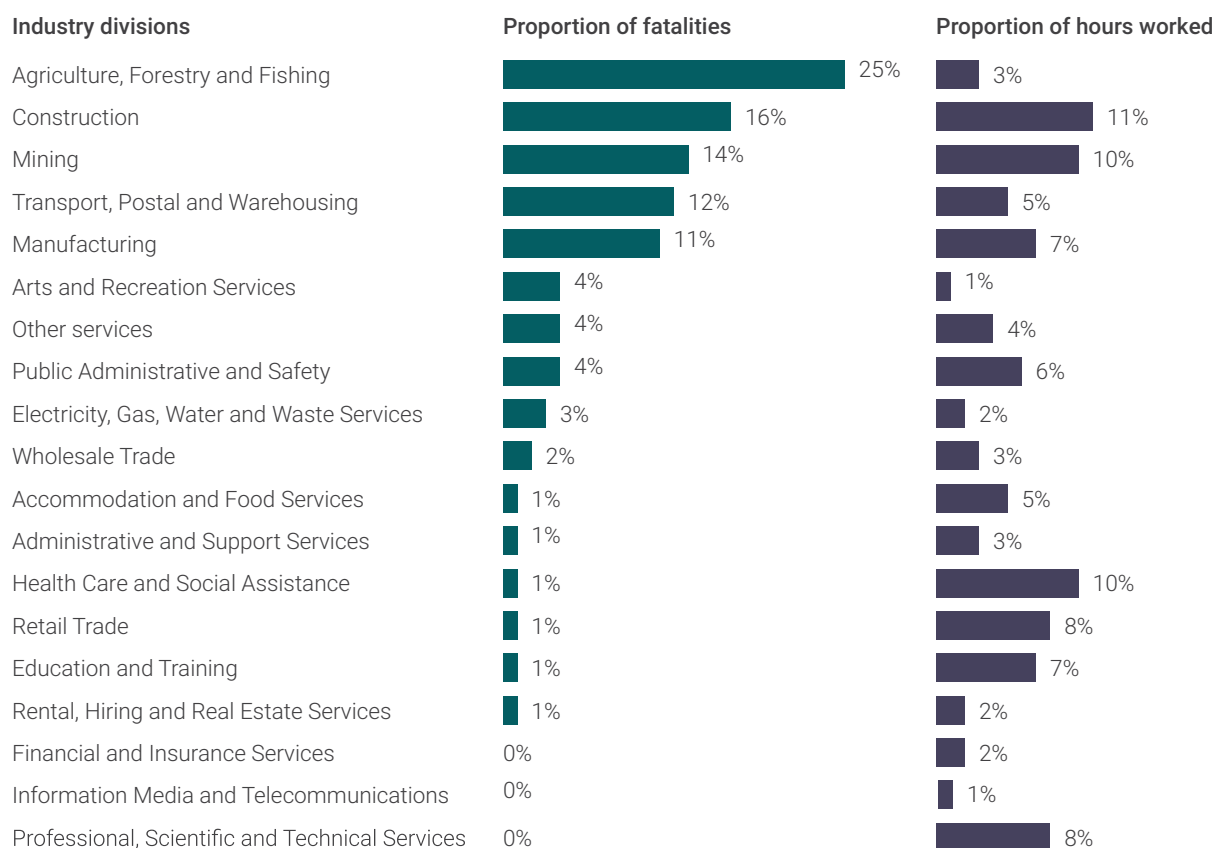
The most recent data comparing the agricultural industry with other industries in Western Australia was published in the *State of the Work Environment – Work-related traumatic injury fatalities in Western Australia, 2011-12 to 2020-21p (SOWE)*, published by DMIRS in November 2021. This report covers a period starting five years before the period covered by this Inquiry but does not include the last year covered by the Inquiry. However, it is a useful starting point.

The report noted that 54 per cent of work-related fatalities were in three major industry divisions:

- Agriculture, forestry and fishing at 25 per cent;
- Construction at 16 per cent; and
- Mining at 14 per cent.

This is despite Agriculture, forestry and fishing having a relatively small workforce compared to many other industries. In terms of the proportion of hours worked, Figure 28 from the SOWE report shows the dramatically higher fatalities as a proportion of hours worked represented by Agriculture, forestry and fishing.

⁴⁰ AgHealth Australia, School of Rural Health, University of Sydney, submission 30 September 2022, p2.

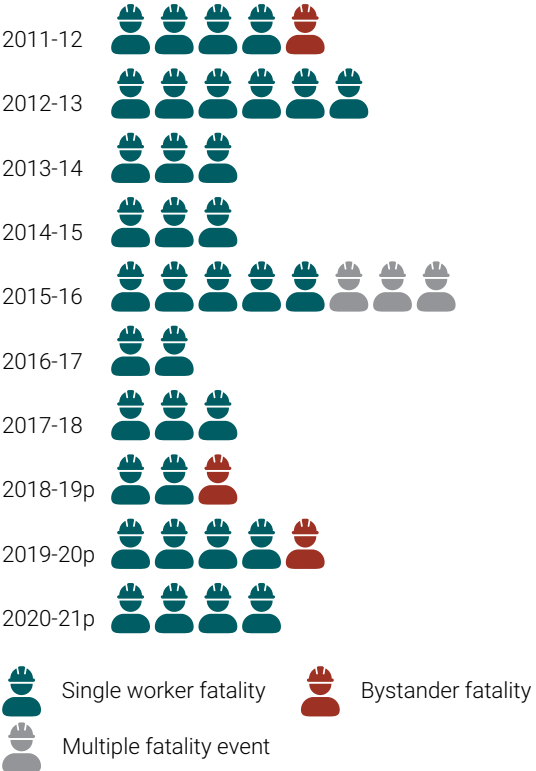


Note: There are 19 Industry divisions under the Australian and New Zealand Standard Industry Classification 2006 Edition (ANZSIC). Proportions of work-related fatalities and hours worked in Western Australia for each industry division are shown in Figure 28 above.

Work-related traumatic injury fatalities and hours worked by industry division (2011–12 to 2020–21p)

Source: State of the Work Environment – Work-related traumatic injury fatalities in Western Australia, 2011-12 to 2020-21p (SOWE) – report

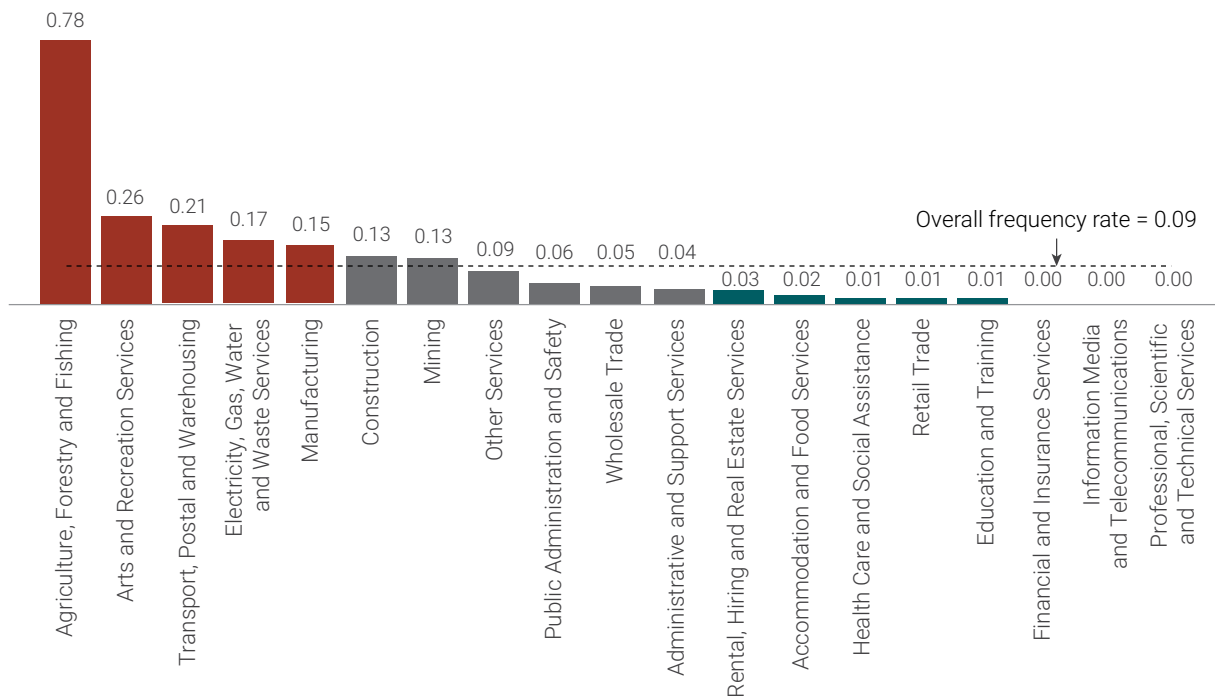
Figure 30 from the SOWE report shows the work related traumatic injury fatalities in the Agriculture, forestry and fishing industry in the 10 years covered by the SOWE report.



Work-related traumatic injury fatalities in Agriculture, Forestry and Fishing (2011–12 to 2020–21p)
 Source: SOWE report

Despite relatively few hours worked compared to many other industries, the Agriculture, forestry and fishing industry has the highest number of work-related fatalities for the period 2011–12 to 2020–21p, with 42 fatalities. This is followed by the Construction industry with 27 work-related fatalities. The fatality frequency rate in the Agriculture, forestry and fishing industry is three times as high as the industry with the second highest work-related fatality frequency rate (Arts and recreation services), and over seven times as high as the overall rate across all industries. The frequency rate of work-related traumatic injury fatalities by industry for the previous 10 years was also calculated by the SOWE report (see page 57).





10 year frequency rate of work-related traumatic injury fatalities by industry division (2011-12 to 2020-21p)
Source: SOWE report

3.2.1.1 Conclusion regarding Western Australia

There are fluctuations in fatality rates in the agriculture, construction and mining industries over the years covered by this report, and it is difficult to identify any particular trends, due to both the fluctuations and the statistically low numbers of fatalities. However, what stands out clearly is that agriculture is the most deadly industry.

In 2021-22, the number of fatalities in the Agriculture, forestry and fishing industry Division in Western Australia was significantly higher than for the last 10 years. Over three quarters of Agriculture, forestry and fishing industry work-related fatalities occurred in the Agriculture subdivision of the ANZSIC codes. This is the part of the industry which grows crops and farms animals, and is commonly referred to as the farming industry.

3.2.2 Other Australian jurisdictions

AgHealth Australia’s submission examined the unintentional farm fatalities across Australia, and as noted it includes non-work incidents. AgHealth Australia provided the following analysis.⁴¹

There were 351 unintentional farm fatalities across Australia in the five years to June 2022. AgHealth Australia provided the following table showing the farm deaths by State jurisdictions for this period.

Table 2 Farm deaths by state jurisdictions, Australia (July 2017-June 2022)⁴²

State	Jul 17- Jun 18	Jul 18- Jun 19	Jul 19- Jun 20	Jul 20- Jun 21	Jul 21- Jun 22	Total
New South Wales	20	20	29	17	17	103
Northern Territory	*	*	*	*	*	7
Queensland	20	28	15	17	15	95
South Australia	7	5	7	5	*	25
Tasmania	*	6	5	*	*	17
Victoria	21	13	16	6	9	66
Western Australia	*	8	7	8	12	39
Total	76	82	80	56	57	351

In terms of actual number of fatalities, Western Australia is ranked fourth highest, behind New South Wales, Queensland and Victoria. However, the differences in populations, hours worked and types of agriculture means that this ranking is not particularly indicative of relative rates. As AgHealth notes:

*“In assessing the Australian and Western Australian cases in relation to work-relatedness, gender and age distribution...there is relatively little variation i.e. the Western Australian cohort of cases is generally similar to that nationally. Although there is a smaller proportion of work-related cases in Western Australia and a suggestion that work cases in 55-74 year-olds are less prevalent, the small sample size (thankfully), makes any definitive interpretation of these data impossible”.*⁴³

According to AgHealth, “the annualised number of deaths on farm fell by approximately 24 per cent (98–75), with agents of injury remaining similar to earlier studies”. It says that “general trends suggest a reduction in the overall death rates for work and non-work incidents nationally”. However, it says there has been a reduction of approximately 19 per cent in the number of farms, and a reduction of approximately seven per cent in the workers, with no change in hours worked, making the downward trend in death rates less apparent.

AgHealth assessed that over the period 2001-2020, Western Australia had the second lowest incidence of fatalities nationally.

41 AgHealth Australia, School of Rural Health, University of Sydney, submission 30 September 2022

42 AgHealth Australia provided complete data in a confidential submission which explains the apparent disparity in the totals figures

43 AgHealth submission 30 September 2022, page 5.

AgHealth also sought to ascertain the rate of work-related incidents by reference to hours worked. It notes that there are some limitations to this assessment because the available data by state was from the ABS Census of 2016, so it is not as current as desirable. For this reason, it describes the comparison as being of “crude data”. It says that “while there has been an increase in rates over the past five years in Western Australia”, the five year average, a more relevant and reliable indicator, shows “virtually no difference in the rates of fatal incidents per million hours worked between Western Australia and nationally”.⁴⁴

AgHealth also notes that although the leading causative agents of fatalities vary in percentages between Western Australia and nationally, the actual causative agents themselves are similar. For example, in Western Australia, mobile farm machinery is 43 per cent compared with 37 per cent nationally. Farm vehicles in Western Australia account for 22 per cent and nationally 33 per cent. Animals constitute 13 per cent and nine per cent of cases respectively. Tractors were the single leading agent for Western Australia at 30 per cent and nationally at 21 per cent.⁴⁵

SWA reported that agriculture had a fatality rate per 100,000 workers of more than double the next category of transport, postal and warehousing for both 2020 and for the five-year average.⁴⁶ Agriculture had 31 fatalities per 100,000 workers in 2019, 46 in 2020, and a five year average of 22.

In industry generally, between 2007 and 2020, SWA reports that the overall rate of worker fatalities had been trending downwards. It had gone from 3.0 fatalities per 100,000 workers to 1.1 in 2018. However, it increased to 1.5 per 100,000 workers in both 2019 and 2020.⁴⁷

In terms of selected occupations, farmers and farm managers had an increased fatality rate of 15.8 per 100,000 workers in 2020 compared with 13.5 in the five year average. Farm, forestry and garden workers suffered the third highest rate of fatalities at 10.1 per 100,000 workers on average, and a rate of 8.4 in 2020. The second most fatalities occurred in the category of road and rail drivers where there were 14.0 fatalities per 100,000 in 2020 and 13.3 in the five year average. As noted above, the average for all categories in 2020 was 1.5 per 100,000.⁴⁸

3.2.3 Conclusions comparing Western Australia to other jurisdictions

The data suggests that Western Australia is unique in the significant increase in fatalities in the industry in the year 2021-22. However, New South Wales experienced a spike in fatalities in 2019-20, against its general downward trend. Victoria has experienced quite large fluctuations over the five years, Queensland experienced a spike in 2018-19.

In comparison with other industries, agriculture in Australia is the most dangerous in terms of the numbers of people who have lost their lives to their work or have been seriously injured while performing work. This situation is far from unique to Australia or to Western Australia. The European Union in its *Review of the future of agriculture and occupational safety and health*,⁴⁹ reported the same conclusion.

44 AgHealth submission 30 September 2022, page 6.

45 AgHealth submission 30 September 2022, page 6.

46 Safe Work Australia, *Work-related Traumatic Injury Fatalities, Australia, 2021*, page 12.

47 Safe Work Australia, *Work-related Traumatic Injury Fatalities, Australia, 2021*, page 24.

48 Safe Work Australia, *Work-related Traumatic Injury Fatalities, Australia, 2021*, page 24.

49 European agency for safety and health at work, Jones, A., Jacob, M., McNamara, J., *Review of the future of Agriculture and Occupational Safety and Health (OSH) – Foresight on new and emerging risks in OSH*, Publications Office.

The HSE (GB) reports that in Great Britain, “agriculture is an industry in which risks are poorly managed, resulting in persistently high rates of injury and ill-health. It accounts for 20 per cent of reported work-related fatalities yet has approximately one per cent of Great Britain’s workforce.” The fatality rate in 2020-21 was approximately six times greater than construction and 20 times greater than the ‘all-industries’ fatal injury rate.⁵⁰

In Ireland, the agricultural industry accounts for 50 per cent of all Irish workplace deaths, while farms make up only between five and six per cent of its workforce.⁵¹

The European Agency for Safety and Health at Work reports that:

*“Agriculture and forestry are among the most dangerous professions in Europe, with a high level of accidents affecting the sustainability and viability of the sector”.*⁵²

It also refers to recent research that indicates significant under-reporting of both fatal and non-fatal accidents in the industry throughout Europe.

The number of fatalities in the industry in Western Australia in 2021-22 has been exceptionally high. For other years, it does not appear that Western Australia’s agricultural industry is more dangerous than the industry elsewhere in Australia. However, it remains the most dangerous of all industries.

50 Health and Safety Executive, *Fatal injuries in agriculture, forestry and fishing In Great Britain, 1 April 2021-31 March 2022 – Agriculture sector workplan 2022/23*, page 3.

51 Health and Safety Authority, *A Review of Work-Related Fatalities in Agriculture in Ireland, 2011-2020*.

52 European Agency for Safety and Health at Work, *Review of the future of agriculture and occupational safety and health (OSH)*, European Risk Observatory Report, 2020, (p 5).

3.3 Term of reference (c)

Incident data collection and coordination across Australia for the past five years, considering agricultural work activities that cause fatalities, but which are not recorded due to the scope of the Australian and New Zealand Standard Industrial Classification (ANZSIC) Code for Agriculture.

3.3.1 Use of ANZSIC codes

The ANZSIC code determined by the ABS for the major Division of Agriculture, forestry and fishing, the Agriculture subdivision and the Agriculture, forestry and fishing support services are described in section 2.1 – The agricultural industry, of this Report (see [page 28](#)). I also noted, at [page 56](#), that DMIRS, SWA and AgHealth Australia use some of the same data sources, all including ANZSIC codes.

This Report also refers to fatalities that have occurred in other ANZSIC codes such as those relating to abattoirs and shed construction.

This Term of reference might suggest that activities that occur in industries which are related to agriculture should be included in considering those work activities that cause fatalities.

DMIRS uses the ANZSIC codes to identify the industry concerned for the purposes of analysing fatalities and injuries, and for organising its resources and work. As noted in the introduction to this report, those codes include major divisions, subdivisions and categories. The use of such codes has many benefits, but also has limitations.

DMIRS' categorisation is according to the industry of the workplace, which describes the main activity of the establishment at which the person was fatally injured.⁵³ DMIRS notes that this classification is consistent across the data collection in all states and territories, however DMIRS acknowledges that caution should be exercised when comparing data from other sources which do not use the same basis for classification of industry.

SWA also uses the ANZSIC codes, but uses both the code for the industry of the employer and the code for the industry of the workplace.

Data analysis by other bodies such as AgHealth Australia use the ANZSIC codes with or without supplementation. AgHealth Australia records incidents for agriculture as being only those that occur "on-farm". It does not include incidents involving farmhouses or residences in its data. However, it does collect data on work-related and non-work related deaths on farms across Australia.

⁵³ *State of the Work Environment, Work-related traumatic injury fatalities in Western Australia, 2011-12 to 2020-21, page 6.*

Also, different bodies will analyse different levels within the data sets and categorise incidents differently. This means that while the reporting may on its face be done by a reference to the same basic categories, a good deal of nuancing is used to gain answers according to the questions asked and the issues being considered. The problem with this approach is that the same data sets can appear to provide different results. Also, where someone wishes to challenge the conclusions of any analysis, there is room for challenge. It has the effect of there being different answers and of undermining the credibility of the overall result of the analysis and the reporting. For example, I note that in the information provided to this Inquiry by DMIRS about deaths in the agricultural industry, a number of the incidents reported might be legitimately challenged as not fitting within the agricultural industry. These include:

- Two separate deaths occurring at abattoirs in Western Australia were included as being within the agriculture industry. However, ANZSIC classifies abattoirs as being within Division C – manufacturing, subdivision 11, being food product manufacturing, category 111 being meat and meat product processing. These deaths are not agriculture related.
- The death of a young man assisting his family to move solar panels at the family’s home on the farm was included. In my view, this was not agriculture industry related.

UnionsWA takes a broad view and is supportive of this Inquiry being far more expansive about what is recorded as an “agricultural” safety incident.⁵⁴ It says that incidents such as those where a worker for a shed construction contractor died after falling from a roof of a machinery shed under construction on a farm ought to be included. It notes that the ANZSIC code for Agriculture, forestry and fishing Division states that it includes units mainly engaged in growing crops, raising animals etc, but that it makes a distinction between two basic activities, production on the one hand and support services to production on the other. However, UnionsWA recognises that “shed building” is considered by the ABS as coming under two separate Divisions of the ANZSIC code, one being for Manufacturing and the other being for Construction.

It is clear then that there are variations in the categorisation of agricultural industry fatalities. Some organisations might include incidents involving construction or maintenance work, including electrical work where it takes place on an agricultural property, when the work is being performed by a contractor. Does that make it relevant to it being included as being in the agricultural industry?

⁵⁴ Submission of UnionsWA, 3 October 2022, page 5.

3.3.2 The purpose of categorising incidents

The question to be asked is what is the purpose of DMIRS and other organisations using the ANZSIC codes and are they appropriate?

For WHS regulators, the purpose is to provide an orderly way of gathering and analysing data based on an objective categorisation by an external body, in this case, the ABS. This then enables:

1. Allocation of work, resources and reporting in an orderly way

The use of ANZSIC codes facilitates this. Whether strict adherence to the codes is necessary is a matter for consideration depending on issues of efficiency. For this purpose, it does not matter if categories are merged or dissected. Once again, the issue is what questions are the categorisations meant to answer.

However, for proper analysis and reporting, a consistent approach is necessary, and adding incidents that do not fall strictly within the relevant code distorts proper comparisons. It might also lead to double-counting, for example when a fall from a shed under construction on a farm is reported in the Agricultural Division, it cannot then be reported under the Construction Division. Alternatively, all incidents of this nature are reported, consistently, as being Agricultural where they occur on a farm. But they cannot be reported as both Agricultural and Construction related.

2. For alerting industry, PCBU's and workers to the issues most likely to be relevant to them and to attract their attention to improving safety, that is, for public safety messaging

DMIRS' allocation of incidents for public reporting purposes ought to be much more refined. Its reference to the data needs to be focussed more deeply than on the broad code classification division or subdivision. For example, the data demonstrates that grain, beef and dairy farms are the most deadly. It seems that for the purposes of its focus on WHS activities and of the safety message to the workers and PCBU's being most effectively targeted, statistics about the whole of the agriculture, forestry and fishing industry are likely to be counter-productive. Statistics at the more targeted level are more likely to gain the attention of the industry participants likely to be affected.

3.3.3 Other ways of categorising incidents

There may be other ways of categorising work activities that cause fatalities, for example, a system might be developed that does not rely at all on industry categories, but rather on the work activities. Such categorisation might take account of incidents such as:

- falls from height;
- crushing by a number of different methods;
- motor vehicle crashes,

regardless of industry.

It might look at preventative measures used or not used, such as:

- seat belts;
- helmets;
- PPE.

Either of these methods would apply to all industries. However, each industry has unique characteristics, and the methods and issues arising in the Agriculture subdivision of the ANZSIC Agriculture, forestry and fishing Division are more likely to have common causes and circumstances than those applying in, for example, a construction business or a transport business.

3.3.4 Conclusion

The use of industry-based classifications is the most appropriate way to classify incidents. It is rational, and can be applied consistently, using objective data from an independent source. However, bodies using the same data source apply it in different ways.

When using the data for public safety messages, reference ought to be to narrow levels of classification to assist in the efficacy of the message.

Recommendation 1

That DMIRS and the Commissioner continue to utilise the ANZSIC codes for their own internal purposes, but that they be supplemented with other data sources.

Recommendation 2

That DMIRS and the Commissioner utilise the Agriculture and Support Services (05) subdivisions of the ANZSIC codes separately rather than the Agriculture, forestry and fishing major division (01), for the purpose of focussing attention of the farming sector on fatalities and serious injuries.

3.4 Term of reference (d)

Recommending strategies, performance measures and targets to reduce and eliminate deaths and serious injuries.

This Term of reference focusses on strategies, performance measures and targets which, if implemented, ought to improve the culture, safety awareness and practice in the agricultural industry. These things ought to have the effect of reducing deaths and serious injuries. The prospect of eliminating deaths entirely is unlikely given human nature and the circumstances in which agricultural work is performed. However, improved safety ought to control those circumstances which are controllable.

In my view, the regulator cannot control the number of deaths and serious injuries so placing targets on the number of deaths and serious injuries is not practicable. Certainly, it is not feasible to place targets on the number of serious injuries until the significant under-reporting is rectified. When that occurs, there will be a short-term issue that increased reporting may give a false impression of there having been an increase in actual serious injuries, rather than an increase in reporting.

However, it is feasible to identify performance measures and targets for activities of the regulator aimed at improving culture, safety awareness and practice in the agricultural industry and within the regulator's operations.

The question to be addressed is how to engage with the agricultural industry to bring about the necessary changes? It must be acknowledged that due to the significant changes in the structure of the industry in the last 20 years, with the consolidation of businesses, the reduction in the number of businesses, increased application of technology and greater sophistication of many business operations, there are a number of sectors that need particular support, which have been left behind. They include the small family businesses, but also older males in particular.

A number of things needs to change:

1. The attitude to the regulator;
2. The focus on safe practices.

3.4.1 The attitude to the regulator

I referred in the Background section of this report, to the attitudes expressed from amongst those in the agricultural industry towards the regulator.

This requires a change in approach from both the regulator and the industry. Two issues arise here, firstly, fear of the regulator and secondly, attitudes towards compliance with the law versus attitudes to safety and practice. The message to the industry needs to be more about how to be safer and how the regulator can assist in that, and less of a focus on punitive measures.

Fear of the regulator is counter productive. Businesses will not seek advice and assistance if they fear the regulator will take punitive action for minor, technical breaches (see the attitudes expressed to the inquiry in Appendix 1 and the attitudes expressed by industry peak body leaders). The great bulk of the industry's businesses want to be safe and for the workers to be safe. Many are doing their best but need more help. The industry has received the message about industrial manslaughter, however, much of the effect of this has been to increase fear of the regulator. The industry has not received the message that the regulator takes a balanced approach to decisions about whether to prosecute. It is time for the regulator to talk differently to the industry about safety.

There needs to be a more proactive engagement by the regulator: more inspections, more proactive activities and more opportunities for industry groups to engage with inspectors.

As I set out in detail in the Background section of this report, the resources allocated to the agricultural industry by DMIRS are negligible and proactive activities are very limited. Both of these things need to be rectified, and a positive focus placed on the agricultural industry.

The WHS Act, including the industrial manslaughter provisions, along with the recent increase in fatalities in the industry, have created a sense of urgency. This sense of urgency provides an opportunity which must be utilised. Even the calling of this Inquiry, the media attention it has received and the community engagement it involved have already had a positive effect on the industry. Many who participated in this Inquiry are now looking for leadership and positive assistance.

I note in Term of reference (j) that both the objects of the WHS Act and the regulator's role include aspects of advice, information and training.

Change, particularly cultural change, requires a lengthy process and repetitive messages.⁵⁵ In my view, significantly increased resourcing and a specific plan for five years, at least, is necessary. Changes are already being felt on farms from the attitudes of the younger generation bringing the lessons they have learned from agricultural colleges and other industries. The women in the industry are actively engaged and seeking support to entrench the safety message into practice.

As I noted earlier, there is no shortage of reports and recommendations for changes which need to be made. What is now required is a commitment by all stakeholders to contribute to change, other than through legislation, and by the industry through leadership.

⁵⁵ Kotter JP, *Leading change: Why transformation efforts fail Harvard Business Review*, May-June 1995, and others.

3.4.2 Other initiatives

There are a number of initiatives to achieve improvement in safety in the agricultural industry.

- in conjunction with the industry, ensure funding of non-regulatory, advisory service to farms, as has been done in Tasmania, New South Wales and Victoria, and as it has previously done in the ThinkSafe program;
- properly resource a well-planned, sustained program of inspections in conjunction with education;
- in conjunction with industry, undertake a positive, sustained media campaign aimed at particular attitudes and practices;
- work within the industry to establish a fund for purposes of promoting the safety message.

3.4.2.1 Non-regulatory, advisory services

Other jurisdictions have invested significant resources, along with SWA, in developing and delivering a number of programs.

The Tasmanian, Victorian and New South Wales governments have taken a leadership role in improving health and safety in the agricultural industry. The most significant in terms of engaging with and educating farmers generally about safety are:

(a) *Safe Farming Tasmania* program

- Funded by the Tasmanian Government.
- Commenced in 2015.
- A joint initiative of WorkSafe Tasmania and the Department of Natural Resources and Environment.
- Is staffed by consultants who have no regulatory or enforcement powers.
- Funding was initially for one consultant and has been increased to two consultants in 2020-21.
- Consultants;
 - undertake farm visits including to undertake audits/inspections and hold discussions and information sessions with farm workers on safety topics specific to needs of the farm;
 - make presentations to groups;
 - provide advice which is confidential to the farmer;
 - provide practical resources including induction checklists and handbooks, hazard checklists, safe work procedures, safety awareness videos.

Results of a survey by WorkSafe Tasmania indicate that the service has great recognition within the agricultural industry. A very high percentage of farmers who had engaged with the program had made changes to their work health and safety practices, planned to make further changes, and would recommend the program. The program consultants are reported as being trusted advisers to farming enterprises, and the farmers feel free to engage with the program without having an inspector, with regulatory powers, involved and visiting their farms.

(b) New South Wales Farm Safety Advisory program

- NSW Farmers Association advocated for the program, and has been engaged to deliver it;
- a pilot program commenced in October 2019 to June 2020, with a value of \$223,770 (excluding GST);
- In 2021-22, the NSW Government committed to a four-year program in partnership with the NSW Farmers Association;
- Funded by the NSW Government for \$2,000,000 until 30 June 2025. In kind support is provided by SafeWork NSW;
- Sets out targets in terms of engagements with farming businesses and increasing awareness of safety;
- Two safety advisers, without regulatory and enforcement powers undertake the program;
- The program involves on-farm visits, an advisory phone line, a program reference book, a monthly newsletter, website online resources and a customer request management system;
- Access to the program is free subject to eligibility criteria. These include that the business is a sole trader, small or medium business with up to 50 full time employees excluding seasonal workers;
- SafeWork NSW inspectors and staff work directly with the advisers to support the program's communication and resources.

(c) Victoria Making Our Farms Safer

- Victorian Farmers Federation undertakes the program;
- Funding of approximately \$3,000,000 is provided by the Victorian Government;
- The program commenced with funding from October 2020 to July 2023;
- Four staff including two consultants, without regulatory or enforcement powers, undertake the program;
- Although delivered by the Victorian Farmers Federation, the service is available to all farms and is free;
- The program involves on-farm visits, advice, presentation to groups, attendance at field days, a website containing resources including those dealing with major safety issues in the industry including:
 - telehandlers;
 - chemical storage;
 - child safety on farms, as a result of a coronial inquiry recommendation.
- Demonstrations of recovering vehicles from bog, which has involved three events attended by dozens of people;
- Farm safety monthly newsletter, emailed to approximately 5,500 addresses. This has a rate of 45 per cent of emails being opened each month with approximately 2,500 people having access to the newsletter each month. It was pointed out that the newsletter is expressed in terms that are amenable to farmers and does not use government jargon and is written from the point of the advisers being seen to be part of the industry.

The Victorian Government also provided some funding for farmers to upgrade equipment for loading ramps for livestock to improve safety and also recently provided \$6,000,000 over a period of four years to enable farmers to retro-fit roll-over protection on quad bikes. The program has now ceased.

The Victorian *Making Our Farms Safer* program is reported to have far exceeded its target of 50 engagements with farmers per annum and has undertaken over 200 in two years and attended eight field days and 90 other activities.

(d) ThinkSafe Western Australia program

Returning to Western Australia, the Government previously undertook a small business safety program, aimed at industry generally, called ThinkSafe. This program;

- was established jointly by WorkSafe and WorkCover;
- involved a free inspection and advisory service;
- was administered by WorkSafe;
- engaged, through a tender process, a panel of up to 23 consultants specialising in a variety of industries;
- utilised those consultants to undertake an initial visit to the business, establish an action plan, with a follow up and review visit 12 months later. The consultants were independent of WorkSafe and had no regulatory and enforcement powers;
- was confidential to the business;
- was promoted by industry organisations in their publications and communications to members.

Independent surveys reported that businesses found the service was excellent and brought positive results for the businesses by focussing their attention on improving safety.

Although this program was available to industry generally, it was also used, to a small extent, by the agricultural industry but it was not heavily promoted to farmers.

The program ceased in March 2014 due to budget cuts. The abolition of the program is said to have resulted in increased demand on WorkSafe's call centre and a lack of continuity in engagement with industry.⁵⁶

3.4.2.2 A properly resourced, well-planned, sustained regulatory campaign

As I noted earlier, DMIRS' Regional Team looks after almost all regional industries. It is not focussed on the agricultural industry. It does not have the resources to enable it to undertake other than ad hoc, occasional campaigns of inspections. Inspectors are often called on to do investigation work.

Sufficient funding is not available to travel to farms to undertake inspections other than on these occasional campaigns. Reports also indicate some cultural issues associated with aspects of this team's history.

Given those difficulties in undertaking proactive agricultural work, it is not surprising that inspections of businesses closer to the offices of the inspectors, which are in other industries, are those that receive attention.

This ad hoc, occasional campaign approach is in stark contrast to what has been a very productive and well-planned program undertaken by the HSE (GB) in Great Britain.

⁵⁶ *Parliamentary inquiry into WorkSafe (Coming home safely: WorkSafe and the workplace culture in Western Australia, Report 31 - Standing Committee on Public Administration, August 2020, pages 255-258.*

(a) Great Britain – Agricultural Sector Workplan 2022-23

The HSE (GB) has developed detailed, multi-level programs to increase safety in the agricultural industry. Its aim, through sustained intervention, through its Agricultural Compliance Events (ACE), is to raise awareness, improve standards within the industry and reduce the rates of death, serious injuries and illness.

In 2018-19, HSE (GB) launched its ACE. It publishes on its website⁵⁷, its plan for inspections within the agricultural and forestry sectors for the current year. Its focus for 2021-22 was on inspections of livestock farms, by trained field inspectors. Prior to inspections, frontline inspectors received additional or refresher training. HSE (GB) set out its Initial Enforcement Expectations to ensure consistency of enforcement across the country. However, these do allow for local factors.

In conjunction with a reputable agricultural industry training provider, HSE (GB) developed health and safety courses for farmers which can now be done online. The first part of the course can best be undertaken prior to an inspection.

The program has a two-year cycle. In year one, HSE (GB) writes to a specified number of farms in selected areas, advising that they will be inspecting in the area later in the year, and inviting the farmers to take the ACE Part 1 course on safety. Course places are paid for by HSE (GB) and are available to farmers on a first come, first serve basis.

A couple of months after the course has been run, farms will be inspected, whether or not the farmers have taken the training. This period allows farmers to take any necessary remedial action which the training would have alerted them to.

In year two, HSE (GB) invites the farmers who have taken and completed the Part 1 of the course to take Part 2 of the course. All farmers who took Part 1 can take the course without a fee. HSE (GB) undertakes an inspection on a small, random sample of farms which were visited as part of Part 1 to ensure that standards have been maintained. These visits are to both farms which have done the training and those which have not.

The costs of the program are recovered from all businesses where HSE (GB) has intervened due to health and safety issues arising. By taking the course and acting on the information provided, farmers can improve theirs' and their workers' safety, and reduce the chances that the inspection will result in enforcement action and cost recovery.

⁵⁷ [HSE UK website](#).

3.4.2.3 Positive, sustained media campaign

(a) Great Britain

The 2017 HSE (GB) research⁵⁸ examined sources of information and influence on farmers and the types of messages that would most affect them in their attitudes to enforcement and risk. They found that “messages relating to threats of legal enforcement for non-compliance, financial motivations, or encouraging wider uptake of training were not anticipated by farmers to be effective.”⁵⁹

However, it found four types of messages worthy of consideration:

- general safety messages;
- emotive messages emphasising bad consequences;
- specific messages about specific behaviours and practices; and
- supportive messages offering concrete examples.

It noted that in respect of older farmers who are more fatalistic, messages showing that something can be done, or that particular types of accidents or consequences are not inevitable, may be effective.

In September 2022, the HSE (GB) published further research into the “content, tone, style, layout and call to action to understand the best ways to communicate with farmers about safety”.⁶⁰ This research sets out a range of types and approaches to messages to farmers that are likely to be effective and those which are not.

(b) Australia

In Australia, SWA advised the inquiry that it and other jurisdictions take a very cooperative attitude and are willing to share materials they have developed. WA should use those resources. Examples include the Victorian WorkSafe video, “It never happens to you. Until it does”.

As I note later in respect of Term of reference (g), the agricultural industry would greatly benefit from the development and widespread publication of either an overarching code of practice, or a comprehensive suite of codes to provide them with specific guidance in those areas of greater risk. Those general industry codes which also apply to agriculture work could be linked to or modified for specific industry attention.

⁵⁸ HSE, *Summary Report , Appreciation of Risk Research, March 2019.*

⁵⁹ HSE, *Summary Report , Appreciation of Risk Research, March 2019, page 10.*

⁶⁰ HSE, *Research Summary, Agriculture Sector, Farmers and Agricultural Workers Communication Testing and Development.*

3.4.2.4 Leadership in the agricultural industry

Leadership and culture in farming are essential to bring about change. SWA noted that “initiatives are also likely to be more effective if championed and led by those bodies and individuals recognised and respected in the industry”.⁶¹

There is some very positive leadership within the agricultural industry towards safety. I noted earlier the safety programs developed by various groups.

I also record the work of Women in Farming stakeholder group and their engagement with inspectors to conduct a series of webinars, workshops and inspections. The WA Shearing Industry Association, the Grain Growers and the Wine Industry Association have created useful resources. However, I have also noted that there are some very unhelpful attitudes expressed by leaders of the peak bodies.

(a) Modelling of safe practice

Research into why farmers do not use helmets when riding all-terrain vehicles or quad bikes⁶² noted that both social norms and perceived control of risk are two of the three main reasons farmers reported for not wearing helmets. Social norms, the set of unwritten rules guiding behaviour within a group or society which can influence actions and impact on well-being, appeared to primarily support riding without a helmet.⁶³ The authors referred to studies which showed children growing up on farms are exposed to farm hazards from an early age and learn the normative responses to those while growing up. It says that risky behaviours are often modelled by farming parents, including avoiding the use of PPE. Therefore, they say that new norms need to be established of helmet-wearing among farmers.

Other research⁶⁴ indicates that a key intervention to encourage a shift in societal norms is modelling, where prominent farming figures appear regularly in the media demonstrating the desired behaviour, including wearing a helmet.

The research suggested an alternative method of modelling, of theatrical reconstructions of farming incidents, illustrating the desired normalising behaviour.⁶⁵

(b) Use of relevant media

The media sources which might be aimed at this group would include specific industry media. Use of media relevant to the target audience needs to be considered by experts in these campaigns. For example, a Twitter campaign aimed at over 65-year-olds would be unlikely to reach its target audience. Farmers, particularly the older generation, read the *Farm Weekly* and *Countryman*, and listen to ABC radio. These media ought to be utilised for regular reminders to the agricultural industry about safety on farms. Leaders in the industry ought to be espousing the need for cultural change and leading by example, including being willing to model safe practices.

61 *Safe Work Australia, Australian Work Health and Safety Strategy 2012-22, page 1.*

62 *Irwin, A., Mihulkova, J., Berkeley, S., Tone, I., “No-one else wears one:” Exploring farmer attitudes towards All-Terrain Vehicle helmets using the COM-B model, Journal of Safety Research, 81, pages 123-133.*

63 *Irwin and others, page 21.*

64 *Michie, S., Atkins, L., West, R., (2014). The behaviour change wheel. A guide to designing interventions, First edition, Great Britain, Silver Back Publishing.*

65 *Reed, D.B., and Claunch D.T., (2017) Moving social work norms via theatre for senior farmers. Journal of Safety Research, 60, 17-20.*

(c) Regular newspaper columns and interviews

DMIRS in conjunction with industry could engage with the media to promote their safety message. A weekly safety column in a newspaper, written by an inspector or a leading farmer, in language which is recognised by farmers, without jargon or acronyms, would be widely read. It could provide practical advice and references to resources.

ABC radio has a regular interview and talk back segment involving the Consumer Protection division of DMIRS. DMIRS could engage with ABC's rural and regional stations to replicate this for agricultural safety.

By farmers reading, hearing from and encountering WorkSafe Group inspectors, private advisors and industry leaders in their own media, in a positive, educative and helpful way, ought to have two particular benefits. It ought to increase their familiarity with and reduce their fear of the regulator, and in turn, listen to their advice and also seek it out.

3.4.3 Conclusion

There is a sector of the agricultural industry, with poor safety awareness and practices, which prefers to avoid contact with the regulator and are happy to remain out of sight and out of mind. This means they also do not contact the regulator to seek advice or information.

At the same time, the number of proactive activities, particularly inspections by the regulator, is very low. This means that those in the industry who may wish to avoid contact with the regulator are able to remain invisible. They do not receive the advice and information they need to improve their safety.

Therefore a twofold approach is necessary to reach and improve the safety awareness and practices of this sector of the industry, that needs it most. Those two aspects involve:

1. The regulator devoting inspectorial resources specifically to the agricultural industry by way of an Agricultural Team. The team would set out and implement a long term plan of inspections and develop and distribute appropriate resources. It would also engage with the industry through the media, increasing the awareness of the industry of the benefits of dealing with the regulator.
2. The establishment of a non-regulatory advisory service for the agricultural industry. The service may be identified with WorkSafe in some way, but the emphasis would be on the non-regulatory aspects. The service would be external to WorkSafe as it is in New South Wales and Victoria, although operating with its support. Alternatively it may be administered internally such as the Tasmanian scheme and former ThinkSafe program in Western Australia.

Recommendation 3

That in the allocation of resources amongst industries, the agricultural industry be prioritised, both within the WorkSafe Group of DMIRS and externally.

3.1 Within the WorkSafe Group

- (a) A dedicated specialist Agricultural Team be established within the new WorkSafe Group within DMIRS.
 - Members of the Agricultural Team to include inspectors and liaison officers, similar to those in the Mines Safety inspection team.
 - Given the need for the Team to gain the respect of the agricultural industry, Team members to be specifically recruited for this team.
 - Consideration be given to the location of Team members.
- (b) The Team's objective, and accordingly, their work allocations and resources, be to set out a plan for inspections for the next five years and the plan to be implemented. Its work will primarily be proactive and the plan will include key performance indicators for proactive activities. This plan ought to be publicised widely including the sectors to be inspected. Direct contact to be made with farmers alerting them that they will be inspected on a given date.
- (c) Its activities will be:
 - Proactive regulatory and advisory inspections;
 - Attendance at industry events;
 - Development of, and updating, a comprehensive agricultural industry web page, including the use of materials from other jurisdictions (with their agreement), along with other materials already developed for the industry;
 - Materials to be translated into languages relevant to the workforce;
 - Development of a newsletter directed at farmers and their workers;
 - Engagement with industry media to publish a regular column about farm safety and ABC regional radio for a farm safety segment;
 - Reactive inspections.
- (d) A senior level manager to be appointed to lead this team to:
 - Recruit and train inspectors for the particular attributes, attitudes and needs directed towards the agricultural industry;
 - Except in particular cases, guide an approach that prioritises the provision of information and advice. The regulator used such an approach in accordance with the [Statement of regulatory intent](#), for the first year of the implementation of the WHS Act. In this case though, given the need to change long term attitudes, this approach ought to apply for at least two years;
 - Set targets for:
 - Inspections;
 - Events;
 - Readership of newsletters and web page information;

- Engage with industry leaders, external media and psychology experts to develop and publish media campaigns targeted to particular groups, issues and attitudes. These media campaigns to be played regularly over a number of years. A repetition is essential to embedding the message. Their effectiveness then needs to be assessed;
- Engage with the industry to identify and enlist the support of leaders who are farmers, to promote safety;
- Through the Commissioner and the Work Health and Safety Commission, develop an overarching code of practice, or a suite of codes, specific to the agricultural industry.

(e) Major activities

- The Agricultural Team to set a proactive and preventative program of inspections of a number of sectors each year.
- The activities to include groups of inspectors attending, for example, no less than three farming centres each year to:
 - Conduct a public event – the public event would focus on a seminar or demonstration and use the opportunity to alert the local industry that there will be, within say three months, inspections of farms in that area. They would provide to those attending: checklists, workbooks, details of the advisory service to be outlined later in this Term of reference, as well as reference to reputable consultancy and training organisations. The public event could be held on the property of an industry leader or other willing host;
 - Inspections – this activity to include a set number of inspections in the area undertaken at the instigation of the team;
 - Review – approximately a month after the inspections, the team returns to the farming centres with a further public event, to inform the industry participants of the results of the inspections, including to provide positive feedback.

3.2 Advisory service

- (a) An advisory service to farmers be established in partnership with an industry organisation. Appropriate industry bodies for the partnership would include farming organisations such as those who have partnered with Victorian and New South Wales Governments, or engagement through a private organisation or a not-for-profit organisation. Alternatively, it may be administered internally by WorkSafe, as is the Tasmanian scheme and was the former ThinkSafe scheme in Western Australia.
- (b) This advisory service would:
- Be staffed by advisors with administrative support;
 - Have advisors who are recruited on the basis of their:
 - Knowledge of agricultural safety;
 - Ability to gain confidence of farmers and farm workers;
 - Have advisors without regulatory powers;
 - Provide advice for the benefit of the farmer;
 - Work with industry associations to promote the service;

- Initiate advisory auditing visits to a substantial amount of farms per annum;
 - Conduct a proactive program of visits aimed at particular sectors each year, plus a reactive program to respond to requests for visits;
 - Attend agricultural events such as field days;
 - Host events with either a general or specific focus, for example an event to demonstrate safe bog extraction techniques as is provided in Victoria;
 - Create a comprehensive, up to date website.
- (c) The information resources for this service may be able to be developed with the assistance of, or in conjunction with, the Tasmanian, Victorian and New South Wales programs.

3.4.4 Industry contribution

During community consultation meetings and in submissions to this Inquiry, a number of people raised the issue of the establishment of a fund to promote safety in the industry, through a levy.

The agricultural industry contributes at a national level to various research and development funds to deal with significant issues that affect productivity and the success of the industry. For example, grain growers already contribute 1.02 per cent of their net crop sales towards levies comprising the Grains Research and Development Corporation's Emergency Pest Plant Response Deed, with matching Australian Government funding.⁶⁶

The industry in Western Australia already undertakes significant activities towards improving safety, through particular groups, but not as a whole industry. It could make a contribution, jointly with the Western Australian Government, by way of a levy, for safety promotion purposes.

Given that the issues of safety within the agricultural industry are similar across Australia, and the industry is the most unsafe all over the country, it may be appropriate that it be raised at the national level.

Recommendation 4

That a fund be established through a levy on the industry and matching contributions by government. The purpose of the fund be to undertake ongoing media campaigns and other activities aimed at promoting safety in agriculture.

⁶⁶ Grain Producers Australia submission, 26 September 2022, p4.



3.5 Term of reference (e)

Workplace based consultation, participation and representation provisions, including the appointment, powers and functions of health and safety representatives and committees.

3.5.1 The WHS Act requirements

Part 5 Consultation, representation and participation of the WHS Act provides:

- (a) that persons conducting a business or undertaking (PCBU) have a duty to consult with its workers about matters relating to work health and safety;
- (b) for the sharing of relevant information;
- (c) that workers be given a reasonable opportunity to express their views or raise work health or safety issues or contribute to decision making; and
- (d) for when consultations between the PCBU and workers is required.

Division 3 of Part 5 of the WHS Act sets out provisions for the election of health and safety representatives, the determination of work groups to facilitate the representation of workers, and the process for election of representatives. It also sets out the functions and powers of health and safety representatives and the obligations of the PCBU to the health and safety representatives, including obligations to provide an opportunity for health and safety representatives to attend training and to perform their functions.

Division 4 of Part 5 deals with the establishment, constitution and functions of health and safety committees including the obligation of the PCBU to establish a health and safety committee if requested. There is a requirement that the PCBU allow members of the committee to spend time reasonably necessary to attend meetings and perform their functions. It also deals with the requirement for the PCBU to consider recommendations of the health and safety committee and how disputes about those issues are to be dealt with.

3.5.2 The Regulations

The Work Health and Safety (General) Regulations 2022, at Chapter 2, provides further detailed arrangements for these requirements.

3.5.3 Code of practice

There is also a *Code of practice: Work health and safety consultation, cooperation and coordination*, to provide guidance to PCBUs in meeting their obligations.

3.5.4 Submissions

UnionsWA provided the only submission dealing with this issue. It notes that workplace consultation, participation and representation are "sorely lacking". It says that WorkSafe must be properly resourced to pursue cultural change, and that representation "needs to be facilitated and enhanced by both law and policy".⁶⁷ UnionsWA recommends that businesses that wish to employ temporary visa workers should only be allowed to do so "if they demonstrated a strong health and safety record with no major breaches, and provide WHS training, consultation, and education to their labour force in the appropriate languages and formats".

3.5.5 Business awareness and knowledge

It is clear that, apart from those large sophisticated businesses which have human resources and safety specialists, the agricultural industry at large is unaware of these requirements.

During the consultation process, I had the benefit of hearing from a number of businesses about their particular WHS consultation arrangements. The following is a sample of the information they provided.

1. A member of a family business, who had moved away from the property and had undertaken a profession, returned to the property to participate in the family business. The business has up to 70 employees at various stages of its growing season. The business administration is undertaken by one person who deals with all of its requirements. There is no health and safety officer and nobody within the business takes particular responsibility for safety. All members of the family are very conscious of being proactive to do as much as possible to reduce risks and to keep its workers safe. When this person returned to the business, she took on the safety role, with no training or information. With the help of a particular WorkSafe inspector, who she described as someone she could turn to for help, and undertaking a lot of reading, she is working on policies.

The business has a number of means of dealing with safety issues and enabling workers to raise any concerns. There are regular toolbox meetings and daily meetings before work commences. There is a suggestion box and anonymous contributions are made. She recently undertook an anonymous survey of all workers.

This business does not have a safety committee or a health and safety representative and she was unaware of the provisions of the WHS Act or how those arrangements might operate. The person indicated that none of the workers had sought to have a committee or health and safety representatives, however, she believes that the workers are happy to raise any safety issues with her and do so when they encounter them. This person expressed the belief that everybody should be safe and that it is unfair to place people in an unsafe situation.

⁶⁷ Submission of UnionsWA, 3 October 2022.

2. This person is a member of a family with an horticulture business. The business employs 60 employees, 35 of whom are on overseas workers on business visas, either through the Pacific Labour Scheme or the Holiday Working visa (backpackers). As with the person referred to above, she was not aware of the consultation, participation and representation provisions of the WHS Act. The business has no officer formally designated as having safety responsibility. The adult daughter of the family engages more with the Pacific Islander workers. She reported that there seems to be a perception that women in the safety role are more accessible, compassionate and receptive to safety issues being raised with them, and as a matter of practicality tend to have more opportunity to engage with the workers than the men who are undertaking more physical work and supervision.

This person indicated that the problem for them is not having the skills to manage or even find their way around the provisions of the WHS Act and what they need to do. She suggested that their peak industry body, for example Vegetables WA, may be able to provide training modules and resources for both management and the workers so that if they need to respond to a request for worker representation and a committee they would know how to go about it. This includes tailoring the information to their specific sector rather than to the broad industry of agriculture. She noted that while Safe Farms WA is a very good support, because of its own limited resources it tends to focus on the broad agricultural industry needs rather than the sectors which have unique needs.

She suggested that the resources include templates for what a safety meeting might require, how they are run, elections and the various roles. She also suggested that businesses could introduce this consultation and representation arrangement into the workers' induction, as well as identifying for the workers to whom they should refer any safety matters.

She was not aware of any union members within their business who might be interested in raising the issue of safety. Their business has never received a request to establish a representational safety committee.

3. A health and safety coordinator for a horticultural business, who has worked in a number of horticulture businesses, indicated that for the average farming business, having a structured representation arrangement is not workable. This is particularly so where there is only a handful of workers, a couple of whom are family members. It is only in the larger businesses where a structured arrangement would be workable.

There are also cultural impediments for some groups of workers in raising issues with authority figures because it is discouraged in their culture. Those with English as a second language are also more likely to have language difficulties in raising safety issues.

This person also noted that where farmers have a view that safety is a waste of their time, there is a disincentive to workers raising safety concerns. However, a number of people have indicated that where the senior male farmer may be reluctant or not be open to having safety issues raised with them, they seem to be happy to approach a female staff member or female member of the family.

It is helpful for staff when they are being inducted to be informed and have in writing who they are to raise safety issues with so that this provides a signal to them that there is someone for whom safety is a responsibility and that that person is expecting contact from them.

Some farms have daily, informal, start-up meetings, and others have suggestion boxes placed where workers can put in anonymous reports. Once again it comes down to an informal arrangement but one where workers know that they may raise safety issues and concerns.

3.5.6 Conclusions

The community consultation and submissions indicate that amongst the agricultural industry, including some businesses which employ a significant number of workers, there is a lack of knowledge about the consultation, participation and representation obligations and arrangements. In some but not all of the larger businesses, where there is dedicated health and safety management, usually as part of a human resources function, there is better knowledge, and understanding of their obligations. However, the nature of the industry, including:

- its lack of unionisation;
- higher use of seasonal workers; and
- in some sectors, particularly in horticulture, having many workers;
 - for whom English is not their first language, and others having very little English at all; and
 - cultural differences,

means that these representation provisions need to be publicised within the industry, both to the PCBUs and the employed workers.

Consideration might be given to consulting the Commonwealth government about whether conditions relating to WHS should be set for allowing agricultural employers to engage working visa holders.

Recommendation 5

Steps to be taken to raise the industry's awareness of the consultation, participation and representation obligations and arrangements including:

- 5.1 Creating and publicising, on the agricultural industry webpages, information about the consultation, participation and representation obligations and arrangements. Such information ought to be made available in the languages represented in the agricultural industry workforce;
- 5.2 The participation of industry groups be sought to publicise these obligations and arrangements. The grower groups may be the most effective as they may be able to assist in the development of information targeting the particular circumstances of their sector.
- 5.3 Utilising the public events associated with inspections campaigns referred to in Term of reference (d), to educate farmers and workers about consultation, participation and representation obligations and arrangements.
- 5.4 The external advisory service also be tasked with educating farmers and workers about the arrangements.

3.6 Terms of reference (f), (g) and (j)

A number of the Terms of reference are inter-related so it is appropriate that they be dealt with together. They are:

- Term of reference (f) Measures to ensure State and Local Government policies, training and support to the agricultural industry is effectively aimed at eliminating deaths and serious injuries in the industry;
- Term of reference (g) Enforcement and compliance including the role and powers of work health and safety (WHS) inspectors and the application of enforcement tools including policy and codes of practice; and
- Term of reference (j) The role of WHS regulatory agencies in providing education, advice and assistance to the duty holders.

These Terms of reference are also related to Term of reference (d), which has covered many relevant aspects.

3.6.1 Government policies, enforcement and compliance and the role of WHS regulatory agencies

3.6.1.1 No local government measures

In respect of Term of reference (f), I contacted both the Department of Local Government, Sport and Culture and the Western Australian Local Government Association to ascertain what, if any, measures they provide which are aimed at safety in the agricultural industry. I was informed that the local government sector has no policies, training or support aimed at eliminating deaths and serious injuries in the agricultural industry.

3.6.1.2 No submissions dealing with the law

In relation to Terms of reference (g), at the commencement of the Inquiry, I wrote to the Law Society of Western Australia and the WA Bar Association alerting them to this Inquiry and in particular to the Term of reference. I did so on the basis that the issues raised in this Term of reference relate to the legislation, compliance and enforcement, all of which are matters of law, and may affect their members. Neither organisation made a submission.

Of the written submissions received by this Inquiry, none dealt with Term of reference (g) in any substantive way.

3.6.2 The regulatory scheme

In Western Australia, there is legislation, a department (DMIRS), policies and codes of practice which can be aimed at eliminating serious injuries and fatalities. As I note later, WHS regulatory agencies have an important role in providing education, advice and assistance to duty holders.

3.6.2.1 Legislation

- (a) The WHS Act is the foundation stone for WHS in Western Australia. The WHS Act sets out its object as:

s. 3 *Object*

- (1) *The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by –*
- (a) *protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work; and*
 - (b) *providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety; and*
 - (c) *fostering cooperation and consultation between, and providing for the participation of, the following persons in the formulation and implementation of work health and safety standards to current levels of technical knowledge and development and encouraging those persons to take a constructive role in promoting improvements in work health and safety practices –*
 - (i) *workers;*
 - (ii) *persons conducting businesses or undertakings;*
 - (iii) *unions;*
 - (iv) *employer organisations;*
- and*
- (d) *promoting the provision of advice, information, education and training in relation to work health and safety; and*
 - (e) *securing compliance with this Act through effective and appropriate compliance and enforcement measures; and*
 - (f) *ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and*
 - (g) *providing a framework for continuous improvement and progressively higher standards of work health and safety; and*
 - (h) *providing for the formulation of policies, and for the coordination of the administration of laws, relating to work health and safety; and*
 - (i) *maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in the State.*
- (2) *In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work as is reasonably practicable.*

These are the objects which should drive the policies, procedures and allocation of resources by the Western Australian Government. It does so through DMIRS.

(b) The regulator

The WHS Act establishes a regulator, who is the Commissioner,⁶⁸ who is appointed by the Governor.

The functions of the regulator are:

s. 152 Functions of regulator

The regulator has the following functions –

- (a) *to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;*
- (b) *to monitor and enforce compliance with this Act;*
- (c) *to investigate and report on matters relating to work health and safety, including particular types of hazards and matters relating to particular industries or particular businesses or undertakings;*
- (d) *to provide advice and information on work health and safety to duty holders under this Act and to the community;*
- (e) *to collect, analyse and publish statistics relating to work health and safety;*
- (f) *to foster a cooperative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters;*
- (g) *to promote and support education and training on matters relating to work health and safety;*
- (h) *to engage in, promote and coordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator;*
- (i) *to conduct and defend proceedings under this Act before a court or tribunal;*
- (j) *any other function conferred on the regulator by this Act.*

The regulator has the powers, subject to the WHS Act, “to do all things necessary or convenient to be done for or in connection with the performance of its functions.”⁶⁹

The regulator appoints, suspends and ends the terms of appointment of inspectors [ss. 156 and 159], and inspectors are subject to the regulator’s direction in the exercise of the inspector’s compliance powers.⁷⁰

Inspectors have powers, amongst others, to provide information and advice about compliance with the WHS Act; to require compliance with the WHS Act by issuing notices; to investigate contraventions of the WHS Act and assist in the prosecution of offences.⁷¹

Subject to certain conditions, an inspector may enter workplaces, with or without the consent of the person with management or control of the workplace⁷² and may do so without prior notice.⁷³

68 Schedule 1, Division 1, WorkSafe Commissioner.

69 s. 153 (1)

70 s. 162 (1)

71 s. 160

72 s. 163

73 s. 164

An inspector has powers to do a range of things when entering a workplace, including inspecting, examining and making enquiries⁷⁴ and may require access to copy and retain documents, and interview a person including compulsorily.⁷⁵

An inspector may also seize certain things.⁷⁶

An inspector has a number of tools for enforcement. The first is to issue an improvement notice.⁷⁷ This notice requires the person to whom it is issued to remedy the contravention of the WHS Act or prevent a likely contravention from occurring.

The second enforcement tool is a prohibition notice, which the inspector may issue to prohibit the carrying on of an activity, or the carrying on of it in a particular way, where the activity involves a serious risk to the health or safety of a person.⁷⁸

The regulator may also accept enforceable written undertakings given by a person in connection with a matter relating to a contravention or alleged contravention.⁷⁹

These provisions demonstrate the considerable powers of the regulator and an inspector in pursuit of the objects of the WHS Act.

(c) Codes of practice and guidance notes

A code of practice is a document, usually issued in a statutory context, as a practical guide on how a duty holder can comply with their duties set out under legislation and regulation. In the case of WHS in Western Australia, a code of practice may be approved by the Minister following consultation with relevant bodies.⁸⁰ While a code of practice does not have the same force as legislation or regulations, it may be used in court when assessing whether the methods or practice used in a particular case before it are reasonable or practicable.⁸¹ Industry groups may develop codes of practice for consideration by the Minister.

A number of codes of practice have been approved by the Minister over the years. Some apply to particular work regardless of the industry in which it is undertaken. For example:

- Hazardous manual tasks;
- Labelling of hazardous chemicals in the workplace;
- Managing risks of hazardous chemicals in the workplace; and
- Managing risks of plant in the workplace.

Some are directed towards particular industries such as mining or stevedoring. Even those that appear to be directed at particular industries may have more general application, for example:

- Abrasive blasting; and
- Spray painting and powder coating.

74 s. 165(1)

75 ss. 171 and 174

76 Division 5, Seizure

77 Part 10, Division 1

78 Part 10, Enforcement measures, Division 2, Prohibition notices

79 Part 11, Enforceable undertakings

80 WHS Act, s. 274

81 WHS Act, s. 275

Guidance notes (these have recently been renamed Guides) are also developed and approved to provide assistance and guidance to employers and workers in managing risks.

However, apart from one OSH (previous legislation in WA was *Occupational Safety and Health Act 1984* Guidance note, *Fall prevention in the agricultural sector*, there are none directed specifically to providing guidance and assistance to the agricultural industry. DMIRS does have an agricultural checklist and workbook, but no practical guidance in the form of either an overarching code or a suite of agricultural industry codes of practice or guidance notes.

The community consultation and comments by advisory and training bodies demonstrate that the agricultural industry is crying out for practical guidance.

DMIRS and other regulators, as well as farm safety programs in Tasmania, Victoria and New South Wales, already have a large amount of material which provides practical guidance. It needs to be brought together in a suite of documents, linked together, and directed to the needs of the agricultural industry. Where the existing information relates to industry generally it can be extracted and modified to suit agricultural needs.

In addition, materials appropriate to the different sectors of the agricultural industry and their particular needs could be developed.

I also note though, that the codes of practice are lengthy and contain many formal parts which are off-putting and of no interest to a person looking for a simple guide of “how to” and “how not to”. More practical, audience focussed materials are necessary to ensure that they are helpful to the groups who need them most. There is no point in writing a lengthy, formal, legally presentable document if it will not be read or applied by the person who needs it. The sophisticated audience will read and apply the formal code. But they already know about it.

Recommendation 6

- 6.1 That a suite of codes of practice and guidance notes directed to the agricultural industry and its various sectors be developed.
- 6.2 The codes of practice and guidance notes be written as simple “how to” and “how not to” documents.

3.6.3 Deterrence and compliance

Part of the role of a regulator is to achieve compliance with the regulatory scheme. Regulators use a range of approaches to achieve compliance, including to deter those regulated from breaching the scheme and to encourage them to voluntarily comply.

Deterrence includes the threat of punishment by the system and the prospect of public censure. In the WHS system, deterrence includes prosecutions for breaches, with the prospect of financial and other penalties. The deterrence may also include coercion, and in the WHS Act, this includes prohibition notices and improvement notices.

Voluntary compliance may be achieved through advice, assistance, training and other resources.

Each of the provisions in the objects of the WHS Act and the compliance and enforcement tools are not ends in themselves. They are a means towards the end to securing safety in workplaces.

The relationship between deterrence and voluntary compliance is complex.

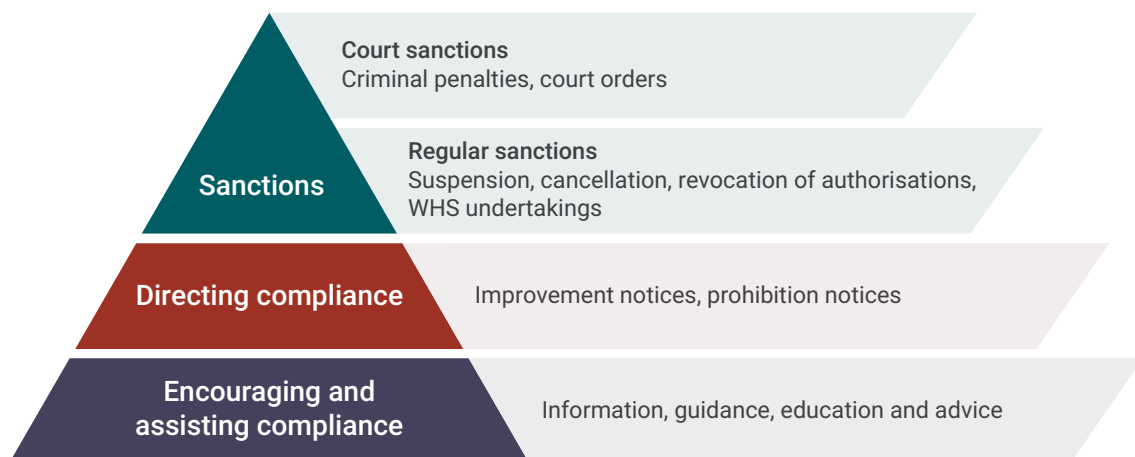
3.6.3.1 Policies

DMIRS has two policies directing its approach to compliance, enforcement and prosecution. With the introduction of the WHS Act, the Commissioner also issued a [Statement of Regulatory Intent](#).

Braithwaite's "enforcement pyramid"⁸² graphically sets out a hierarchy of graduated responses to bring about compliance. It is a tool to provide both a balance amongst the measures and an approach of applying the "softer" approaches more frequently and the "toughest" sanctions least often. Some models add to this greater or lesser volume in the particular levels.

(a) The [Compliance and enforcement policy](#) contains its own version of Braithwaite's "enforcement pyramid". In the DMIRS compliance pyramid, each segment appears to be of the same depth and possibly the same size. Its pyramid includes:

- sanctions;
- directing compliance; and
- encouraging and assisting compliance.



⁸² Braithwaite, *To punish or persuade*, page 39; Malcolm K Sparrow, *The Regulatory Craft - Controlling Risks, Solving Problems and Managing Compliance*, the Brookings Institution, 2000, pages 39-41.

The policy says that “the ... diagram represents, in the general sense, the relative volume or proportionate use of these tools and the ability to escalate if an initial intervention does not achieve the desired outcome.”⁸³ It explains:

The lowest level of the pyramid involves an approach which is employed most frequently, often in combination with other tools, to assist duty holders to achieve compliance. Sanctions (such as criminal penalties) are at the top of the pyramid and are applied less frequently.

This does not mean the regulator will always commence with the provision of information and advice, and only use other tools in an escalated manner.

The regulator will commence their intervention using the tools that are most appropriate in the particular circumstances. Some tools, as indicated in this policy, are alternatives while others may be used in combination. Using a range of tools in the lower levels of the pyramid may often achieve compliance without needing to escalate to the more serious levels of sanctions.

- (b) The [Prosecution policy](#) guides how the regulator or an authorised public service officer employed by DMIRS decides whether to bring a prosecution under the WHS Act. However, only the State’s Director of Public Prosecutions can prosecute the offence of industrial manslaughter.

The *Prosecution policy* is similar to other jurisdictions’ policies. SWA has developed the *National Compliance and Enforcement Policy*. Tasmania has explicitly adopted the National policy. Both Queensland’s and New South Wales’ regulators apply the prosecution policy of their State’s Director of Public Prosecutions. As I noted earlier, the Director of Public Prosecutions in Western Australia decides on prosecution for industrial manslaughter. However, the regulator makes the remainder of decisions whether to prosecute.

Each of the prosecution policies referred to above requires the decision maker to make a discretionary decision about whether to prosecute. That decision is to take account of a range of factors, the “discretionary factors”. They may vary slightly from one jurisdiction to another, but they all take account of the particular circumstances. They include whether it is in the public interest to prosecute; whether or not the prosecution would be perceived to be counter-productive to the interests of justice, and the effect on public confidence and morale. They also include any aggravating or mitigating circumstances.

3.6.3.2 Conclusions regarding policies

In the WHS context, the objective, beyond the usual objectives in bringing a criminal prosecution, is in improving compliance with WHS legislation and reducing workplace injuries and deaths.

Each of the policies sets out in detail the considerations that are to be applied by the regulator (or the prosecuting officer) in deciding on a course of action, whether it be providing advice, issuing an improvement notice or a prohibition notice, accepting an enforceable undertaking, prosecuting a breach, or taking no actions. The regulator must have, and in this case, does have discretion when making these decisions.

The policies appear to be appropriate and balanced. They take account of the competing considerations including the interest in holding PCBUs responsible for safety in their workplaces; the requirements in law in the terms of issues such as obtaining and using evidence, and compassion for those affected by incidents, including PCBUs who may be family members of those who have died.

⁸³ *WorkSafe Compliance and enforcement policy, par 8.*

There are, however, a couple of matters of practical application that arise.

- (a) The [Compliance and enforcement policy](#) notes that the regulator monitors compliance with WHS laws in various ways including the use of inspection powers, carrying out of proactive and reactive enforcement activities, and other matters. However, as this report has already noted, there are few proactive activities and inspections in the agricultural industry to monitor compliance in this industry.
- (b) I have examined those incidents where the regulator has decided whether to prosecute in circumstances of deaths in the agricultural industry in the last five years. I note, with respect, that balance has been brought to those decisions. Very few prosecutions have been brought in respect of those deaths for a number of very valid reasons. Those reasons include:
 - In accordance with the [Prosecution policy](#), consideration of the public interest including where “the person who suffered serious injury or death in a workplace incident has an interfamilial relationship with the only identifiable individual, or an office holder of the only entity, with a duty under the WHS Act and caused the death or injury”. This is in recognition of the inherent penalty that the loss of a loved one imposes on the bereaved family members. That inherent penalty comes from the loss of a family member and is likely to exceed any potential penalty the courts may impose for any offending conduct;
 - Where there is little reasonable prospect of establishing a prima facie case such as because there were no witnesses, as is often the case with workers working alone in the agricultural industry;
 - Where the only person exposed to the hazard undertook the actions leading to their death in a way that casts no culpability on a duty holder.

There were, however, issues raised during the community consultation process that made it clear that the industry is not aware of the discretionary considerations the regulator or the DPP have available. There appeared to be a view that if someone dies at work, someone will almost automatically go to gaol and receive a large fine, which will destroy the business. Many in the agricultural industry still recall the decision by the WorkSafe Commissioner in the 1990s to prosecute a farmer over the death of his young child on the farm. The prosecution was ultimately withdrawn because of the enormous sense of injustice within the community towards the prosecution of a father whose child had died.

There were also concerns about the length of time taken for investigations to be finalised, for machinery and equipment seized as part of that process to be examined and returned, and finally for the outcome to be known. This is a matter that requires attention to the resources and the processes applied by DMIRS to enable a more expeditious outcome.

3.6.3.3 Statement of regulatory intent

The regulator set out the regulatory approach to be taken during the first 12 months after the implementation of the WHS Act. That period has now almost expired. This approach was, generally, for inspectors to adopt a supportive and educative approach to compliance in relation to low risk, technical breaches where the new provisions apply, provided the duty holder was making genuine attempts to comply with legislative requirements. However, this would not prevent inspectors using enforcement tools where actions or omissions had resulted in serious health and safety risks.

Where the law had not changed, the usual approach to compliance and enforcement was to be applied.

This educative and supportive approach in respect of the new legislation was welcomed by those who were aware of it, although there were few of those in the agricultural industry. This lack of awareness has fed into the panic and fear raised by the industrial manslaughter provision.

Each of the mechanisms or methods set out in objects of the WHS Act, quoted above, the codes of practice, guidance notes and the policies of DMIRS is a means to the end of securing health and safety. However, as I set out in detail earlier, in the years since 2001, in respect of the agriculture industry in particular, DMIRS has not devoted either the resources nor the focus on work health and safety in other than reactive investigations and prosecutions.

3.6.4 The importance of preventative work

There has been considerable research and a number of significant reports which recognise the importance of engagement with industry and of the positive effects of proactive and preventative measures by regulators. This includes the effectiveness of various activities by inspectors reflected in Braithwaite's pyramid and in the [Compliance and enforcement policy](#) such as:

- (a) the provision of information and advice;
- (b) inspections and enforcement; and
- (c) prosecutions,

and the different approaches and styles adopted by inspectors.

It is clear that the agricultural industry in Western Australia is not unique in relation to a number of features.

3.6.4.1 European research

The European Agency for Safety and Health at Work has recently noted that “to successfully tackle future OSH challenges in the (agricultural) sector, it will be important to address existing, structural and future OSH issues in a comprehensive and cohesive manner”.⁸⁴ Those issues included “the lack of a prevention culture (farmers and foresters tend to give low priority to OSH over other competing issues), as well as the considerable skills and training deficit, particularly in OSH”. It recommended “measures to improve the prevention culture in the sector...by establishing a specific sectoral prevention campaign or European network for agricultural safety and health”. It also recommended a number of specific activities including safety measures and training advice linked to the farm “as eligible for funding”. It recommended the consideration of a rebate scheme for retro-fitting roll-over protection systems and seatbelts.⁸⁵

⁸⁴ European Agency for Safety and Health at Work, *Review of the future of agriculture and occupational safety and health, Foresight on new and emerging risks in OSH, European Risk Observatory Report, 2020, p9.*

⁸⁵ *European Risk Observatory Report, 2022, p10.*

3.6.4.2 Australian research

In 2011, Safe Work Australia commissioned a report by Dr Liz Bluff of the Australian National University into motivations, attitudes and perceptions in relation to work health and safety.⁸⁶ Although this research was not directed at the agricultural industry, it is very relevant to it.

Dr Bluff undertook a literature review including of empirical studies relevant to socio-psychological factors and work health and safety. She noted that there are two types of compliance:

- “substantive compliance”, which concerns duty holders’ “achievement of regulatory goals or objectives”; and
- “rule compliance” which is “conformance with specific provisions of the law.”⁸⁷

She also noted that “health and safety compliance motivations stem from a complex mixture of legal, economic and social pressures, which in turn may instil a fear of adverse consequences, a sense of moral duty or obligation, or a sense of opportunity that can be realised through complying”.⁸⁸

Most significantly the inspection tool available to inspectors was described by Dr Bluff as being a very effective way to:

“improve compliance with work health and safety and other social regulation, at least in particular contexts or in organisations with particular characteristics. Inspection and enforcement can capture the attention of management, trigger some action that advances compliance, but they may be more far-reaching or quite limited. Regulatees may also be provoked to take action by inspection and enforcement of other organisations, provided that the message about that enforcement gets through.”

A variety of methods are available to regulators:

- enhanced communication, information and advice;
- inspections and enforcement, including the provision of advice; and
- prosecutions.

Dr Bluff noted that “the style of interaction between the regulator and the regulated may be “more or less co-operative, insistent or coercive, and these different styles can also impact on how regulatees respond to regulation.”

Dr Bluff also reported that there is a great deal of research about deterrence and the effects of punishment for non-compliance. It includes that organisations and individuals can be persuaded to comply if they believe that non-compliance will be detected and that punishment will be severe and swift. Without these conditions compliance may not be readily pursued.

However, Dr Bluff noted that there is also a great deal of evidence to suggest that formal inspections, with or without penalties, and consultancy visits, act as a specific deterrent to poor safety and improve performance in risk control, injury or claims rates. She referred to other studies that show that inspections with penalties also achieve reductions in work injuries, if other conditions are met, such as through information supplied by an inspector which facilitates co-operative solutions to work health and safety problems.

⁸⁶ *Something to Think About – Motivations, Attitudes, Perceptions and Skills in Work Health and Safety – Review of the Literature on Socio-Psychological Factors and Their Influence on Organisations’ and Individuals’ Responses to Regulation, August 2011.*

⁸⁷ *Something to Think About, 2011, page 3.*

⁸⁸ *Something to Think About, 2011, page 3.*

Studies also suggest that where inspectors and the organisation both view the inspection process as a form of problem-solving that this had a positive impact on safety.

Dr Bluff noted that some businesses, particularly small and medium enterprises, had no understanding about risks and compliance requirements. Where the inspector was more educative and supported compliance by explaining legal requirements and devising methods of implementation relevant to the business, the businesses were better able to identify and implement compliance requirements.

Face to face interaction with the inspector was the most effective way of making these businesses recognise issues causing levels of illness in businesses using hazardous substances, and what they needed to do to comply.

Dr Bluff found that prosecutions have been found to have a specific deterrence effect, both on the business that has been affected, and on similar other businesses (a reminder effect). The affect differs according to the size and level of sophistication of the business. Smaller businesses often heard about penalties second or third hand and did not have sufficiently reliable details to know how their businesses stood and what action they should take. They also perceived differences between their own and other firms which made comparisons difficult. This thereby limited the general deterrence effect.

Some large organisations, with specialist safety staff, were more likely to monitor prosecutions and use prosecution information to revise their own procedure, or check their organisation's systems and risk controls, but prosecutions did not provoke significant changes.

Small business owners tended not to recall the details of high profile cases, focussing on emotionally disturbing aspects or the punitive effects of prosecution. They reported feeling disempowered or helpless "that they could face criminal conviction for something they perceived to be caused by others."

In terms of regulatory approaches and styles, Dr Bluff reported that research demonstrates that the co-operative or accommodative approach enables an inspector to advise, persuade or negotiate a resolution. The facilitative style was found to foster cooperation, mutual respect and trust between the inspector and the company. Compliance was higher when cooperation was higher, and the company's knowledge of the requirements was high. However, facilitation and cooperation did not enhance compliance if the company's knowledge was low.

Dr Bluff notes that regulators can influence a regulatees' stance toward the regulatory system by developing trust, respect and shared understandings in communications and interactions with regulatees.⁸⁹ "On the other hand, the perception of unfair treatment or abuse of power by a regulator can engender a more dismissive or defiant response."⁹⁰

⁸⁹ *Something to Think About*, 2011, page 47.

⁹⁰ *Something to Think About*, 2011, page 47.

3.6.4.3 Great Britain research

The HSE (GB) has undertaken research into compliance. This research notes that:

“Rather than pursue formal and often deterrence-based approaches, informal negotiated processes are used by regulators in the field to repair damage and minimise future contraventions. These strategies are not necessarily distinct but instead are seen as part of the scale of compliance. The compliance studies identify that prosecution tends to be reserved to cases where the offence is seen as more serious than usual and/or there is evidence of persistence and intentions in the non-compliant culture”.⁹¹

The HSE (GB) notes that “where compliance is less than complete the preferred methods of achieving full compliance are persuasive and educative. The use of formal legal methods, especially prosecution, is regarded as a last resort, something to be avoided unless all else fails to secure compliance”.⁹²

In October 2018, the Senate Education and Employment References Committee concurred with the view that preventative activities on behalf of WHS regulators form a crucial part of the broader framework for reducing industrial deaths. It recommended that “Commonwealth, State and Territory governments ensure that adequate funding and resources is allocated to their WHS regulators to allow for increased, more effective preventative activities in workplaces”.⁹³

3.6.5 Conclusion

Research shows that preventative work, including advice, education and assistance, as well as enhanced communication, are tools that an effective regulator may successfully use, as well as formal compliance measures such as enforcement and prosecutions.

Both the objects of the WHS Act, particularly subsections 3(1) (d) and (e), and the regulator’s functions in s. 152 of the WHS Act include the very important role of positive engagement with duty holders, of providing advice and information and promoting and supporting education and training. The WHS Act does not envisage that DMIRS’ primary activity will be to react to incidents, investigate them and decide whether to prosecute.

The style adopted by the regulator can affect the response of those being regulated. Importantly, inspections play a vital role in all forms of activity aimed at compliance, including education, information and assistance along with the use of formal enforcement tools, as recognised in the WorkSafe [Compliance and enforcement policy](#).

Regulators must have sufficient resources to undertake these activities. Yet in Western Australia, the lack of resources available to do other than limited compliance activities is clear. The number of inspectors allocated to the reactive work far exceeds the number allocated to proactive inspections and the provision of advice (other than as incidental to reacting to an incident). As noted earlier, even within its proactive work, the number of inspectors allocated, and importantly, available, to work with the agricultural industry is very low both of itself and compared with other industries.

⁹¹ Health and Safety Executive, *The determinants of compliance with laws and regulations with special reference to health and safety, A literature review, Prepared by the London School of Economics and Political Science for the Health and Safety Executive 2008, Research Report RR 638 (page vi).*

⁹² HSE (GB), *The determinants of compliance, 2008, page 7.*

⁹³ *They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia, Recommendation 4.*

I noted earlier the significant increase in the number of WHS inspectors for the purposes of investigative work. However, as I noted earlier, there has not been any real increase in preventative resources, particularly in the agricultural industry.

There are almost no resources allocated by DMIRS to preventative work in agriculture. Even though the agricultural industry is recognised as being one of the most dangerous, with some of the highest rates of fatalities and injuries, very little support is given to proactive resourcing. Rural and regional inspectors are regularly expected to supplement the investigative activities and have practically no opportunity to engage with the agricultural sector. Those activities that they do undertake are fitted in between the many other industries that they are also allocated in their regions. While it might be the view that issues can be dealt with from the Perth office where there are resources, albeit very limited, in Geraldton, Bunbury and Albany, these Perth based inspectors do not appear to have agricultural backgrounds and they have difficulty in establishing and maintaining connections with the agricultural industry.

Discussions with inspectors who undertake investigation of incidents, as well as the incident reports they prepare, strongly suggest that the focus of the analysis of the incident is to determine who and whether to prosecute. The issue of lessons learned and how the incident could be used as an education tool seems to be a very low priority.

Where the regulated business believes there is a slight chance of detection of non-compliance and punishment, compliance with both the substance of the system, that is the achievement of a safe workplace, and with the rules, is less likely. This is particularly so with small family operated farms.

Therefore, for both substantive rules-based compliance and improved safety to be achieved, the regulator needs to:

1. engage not only with peak industry bodies, but with individual businesses;
2. engage through:
 - the provision of information and advice;
 - inspections both with and without enforcement measures;
 - prosecutions for non-compliance.

As I noted in the introduction to this report, for a range of reasons, the regulator's engagement with the agricultural industry, in any of these aspects, has been almost negligible. The industry which is the most deadly, is almost completely left to its own devices. It is both geographically remote from inspectors and would appear to be out of sight and out of mind until yet another fatality occurs.

The plan set out in the Recommendations to Term of reference (d) will meet part of the regulator's responsibilities and the objects of the WHS Act. They will go towards fulfilling the regulator's role in providing education, advice and assistance to duty holders. The program of proactive inspections, initially using an educative and supportive approach, will assist the industry to move towards compliance. They will move towards overcoming the large deficit in training and support, aimed at eliminating deaths and serious injuries in the industry.

3.7 Terms of reference (h)

Arrangements to improve the health and safety of those engaged in high-risk work and the use of certain plant and hazardous substances.

3.7.1 Benefits of improved methods and technology

Increased mechanisation, automation and the replacement of direct employees with contractors is seen by some industry leaders as helpful in reducing the risks of farm work.⁹⁴

In community consultation meetings and submissions, reference was made to significant improvements in safety in handling hazardous substances.⁹⁵ Grain Producers Australia (GPA) says that:

“the use of autonomous synthetic chemical pesticide batching and application systems, including robot/tractor spraying systems will in most cases eliminate operator exposure risks and significantly improve label and environment risk compliance through future integration with digital label systems currently in discussion with the Australian Pesticides and Veterinary Medicines Authority.”

These measures are very positive for future improvements in safety. However, in the meantime, until they are widely implemented, the existing systems remain and the risks they carry need to be managed. Further, many of those who are at greatest risk are those in smaller businesses who both do not readily adapt to improved working methods and who do not have the resources to invest in automated systems.

While shifting the risks from direct employment to contractors may have some attractions for farmers, the farmers still bear responsibility for their own property and what happens to people who work on it. They must still:

- ensure that the contractor they engage has and utilises safe systems; and
- ensure that their own infrastructure and equipment with which their contractors will interact is safe. For example, an unsafe shearing shed, power systems, yards and races do not simply become the shearing contractor’s responsibility.

⁹⁴ Grain Producers Association Australia (GPA) submission, 28 September 2022, p3; Evidence of Mr Tony Seabrook, President of the Pastoralists and Graziers Association of WA, Parliament of Western Australia, Standing Committee on Legislation, Work Health and Safety Bill 2019, Thursday, 9 July 2020, p6.

⁹⁵ GPA submission, 28 September 2022, p4.

3.7.2 High risk work

High risk work in the agricultural industry can involve similar work to other industries such as operating a forklift or reach-stacker. This work requires the operator to hold a licence issued by the regulator. There are also aspects of work and issues in the agricultural industry that are unique and are equally if not more hazardous than those recognised in other industries.

AgHealth Australia's research indicates that 43 per cent of all agricultural industry fatalities "were likely to be prevented if known solutions had been used".⁹⁶ Those solutions include seatbelts, helmets, operator protective devices such as rollover protection (ROPS), not carrying passengers on equipment not designed to carry them, and safe play areas for small children.

The most common issues which need to be addressed are:

- (a) Riding quad bikes over uneven ground, mostly without a helmet and often without ROP;
- (b) Machinery and vehicle issues;
 - (i) design issues;
 - (ii) repairs "here and now";
 - (iii) use of old or unsafe equipment;
 - (iv) service and maintenance accessibility;
 - (v) retrieving bogged vehicles;
- (c) Lone workers;
- (d) Lack of communication with unsighted workers;
- (e) Crushing by animals;
- (f) Reluctance to discipline unsafe workers.

3.7.2.1 All-terrain vehicles or quad bikes

There is an overwhelming amount of research and data to demonstrate that all-terrain vehicles, or quad bikes as they are known, have been involved in a large number of fatalities and serious injuries. It has been noted that while they are called all-terrain vehicles, in fact they are not suitable for certain terrain.

SafeWork South Australia reports that there are more than 300,000 quad bikes in use in Australia.⁹⁷

Since 2011 in Australia, more than 150 people have died from quad bike related accidents and 23 of them have been children. Six people present to hospital each day as a result of quad bike related injuries.⁹⁸ The Australian Consumer and Competition Commission (ACCC) has noted research by the University of Sydney that almost half of quad bike accidents involved riders who had 20 or more years of experience.

They are used for general farm transportation, moving materials, spraying and moving livestock. They have been found to be inherently unstable and have a high propensity to roll or tip over when driven over a steep gradient or rough ground, outside their safe operating limits.⁹⁹

⁹⁶ AgHealth submission, 30 September 2022, p10.

⁹⁷ [Quad bikes](#), SafeWork South Australia.

⁹⁸ Media Statement by the Australian Consumer and Competition Commission, Deputy Chair, Mick Keogh, 21 August 2020.

⁹⁹ Moroney, P., Doyle, M., & Mealy, K. (2003). All-terrain vehicles – unstable, unsafe and unregulated: A prospective study of ATV-related trauma in rural Ireland. *Injury*, 34, 203-205.

Quad bikes are not designed to carry passengers. They have load racks and there are weight limits for those racks. Loads need to be strapped low onto the vehicle to maintain its low centre of gravity. There have been warnings about carrying liquids on the rack because when the bike is angled the liquid shifts, altering the centre of gravity. It has been pointed out that the operating speed of the vehicle needs to be in accordance with the conditions. PPE and ROP are recommended when these vehicles are used.

A most distressing example of the difficulties with quad bikes was the death in 2017 of a six-year-old girl, Myley Maxwell, on a rural property in northern New South Wales. She was a passenger on an adult sized quad bike ridden by a young girl. The Deputy State Coroner, Magistrate Elizabeth Ryan noted that in a previous coronial inquest, Deputy State Coroner Freund had noted that there was a common misperception that quad bikes are safe vehicles:

*“because they have four large wheels, and are stable when stationary, the evidence indicates that it was common for people to perceive quad bikes to be safe and stable vehicles, requiring little or no experience to operate.(at par 173)”.*¹⁰⁰

Her Honour said that “this perception was borne out by the evidence of (the child’s) parents, that although they insisted their children wear helmets when using two-wheeled motorbikes they never did so with quad bikes.”¹⁰¹

The two main causes of death and serious injury from quad bikes is asphyxiation from being crushed and head injuries.

There are two ways of reducing those causes – roll over protection and helmets.

(i) Roll over protection

The Australian Government introduced the Quad Bike Safety Standard, the first stage of which came into effect on 11 October 2020. This required a roll over warning label on the machine and in the owner’s manual and labelling showing the angle at which the vehicle would roll over on a slope. On 11 October 2021, ROPS was required for all new and imported second-hand quad bikes sold through a dealer. Mr Mick Keogh, Deputy Chair of the ACCC, is reported as stating that for many years, manufacturers have been claiming rider behaviour is a major reason for a number of deaths and injuries, and that “their aim has been to shift the focus away from the unsafe design of quad bikes”.¹⁰²

In anticipation of the new regulation, sales of quad bikes without ROPS increased dramatically. Side by side vehicles are said to be overtaking quad bike sales.

I note at this point that while an imported second-hand quad bike without ROPS cannot be sold through a dealer, it can be sold privately. A simple examination of quad bikes for sale on the internet show that many, without ROPS, are readily available for purchase.

Given the evidence that farmers tend to keep their equipment for many years, and maintain and repair them themselves, with this active market, along with the increase in sales that occurred immediately prior to the introduction of the ROP requirements, there will be many thousands of quad bikes without ROP used in Australia for many years to come.

When the requirement for ROPS on new and imported second hand quad bikes came into force, as noted earlier, the Victorian Government provided \$6,000,000 over a period of four years to enable farmers to retro-fit ROPS to quad bikes.

100 Coroners Court of New South Wales, *Inquiry into the Death of Myley Maxwell*, 30 May 2019, par 97.

101 *Inquest into the death of Myley Maxwell*, 30 May 2019, par 79.

102 *Media Statement*, 21 August 2020.

(ii) Helmet wearing

I noted in the section on leadership in the industry, a study in the UK which reported that head and face trauma were the most common injury sources resulting from quad bike incidents (43 per cent).¹⁰³ Another study found that helmet wearing amongst quad bike and motorcycle riders on agricultural properties was very low. This was despite research showing that non-fatal head injuries can be reduced by 64 per cent and fatal injuries reduced by as much as 42 per cent through helmet use.¹⁰⁴

A helmet ought to be an essential piece of PPE not just for quad bikes, but for motor bikes and horse-riding as well.

There is no requirement at law for a helmet to be worn on private property. Rodgers and others¹⁰⁵ examined the barriers to wearing helmets and what could be done to encourage their use. The authors found that the following issues were significant:

- Capability (helmet design, time pressure);
- Opportunity (social norms); and
- Motivation.

The authors found that amongst other things, farmers appeared to consider that they could manage the risk of accident through their own driving, experience and capability. The authors referred to the so-called “illusion of control” where individuals believe they can ensure a positive outcome through their own driving prowess and may therefore take more risks.¹⁰⁶ The author said this illusion of control may prompt “a low rate of helmet use”, but “may also prompt other risky behaviours such as increased riding speed, or travel over difficult terrain”.¹⁰⁷

Irwin and others proposed that behavioural change may be effected by education focussing on two key strategies.¹⁰⁸ Firstly, increasing the relevance to farmers of wearing helmets by hearing from other farmers who have experienced head injuries telling their stories. Secondly, they suggested that an education campaign ought to draw attention to the uncontrollable risks inherent in riding a quad bike. This may help to reduce the element within the illusion of control that it is not the rider’s lack of experience or competency but the fault is inherent in the vehicle.

The authors also strongly recommended the modelling of helmet wearing to support its normalisation. This could be an important driver for change. Members of the farming community, seeing a respected farmer wearing a helmet, would reinforce this.

In Australia, wearing a helmet is not seen as part of the Australian culture or image. The belief or myth is that the confident, self-assured Australian does not look so Australian if seen wearing a helmet. A farm or cowboy hat is far more in keeping with that image. Modelling and normalisation of wearing a helmet is going to be a challenge.

On an optimistic note, following one of the community consultation meetings, a farmer advised me that he now wears a helmet when he rides a motorbike on the property.

103 Irwin A, and others, “No-one else wears one:” Exploring farmer attitudes towards All-Terrain Vehicle helmets using the COM-B model, *Journal of Safety Research* vol 81, June 2022, pages 123-133.

104 Rodgers G B (1990) *The effectiveness of helmets in reducing all-terrain vehicle injuries and deaths. Accident analysis and prevention*, 22, 47 to 58.

105 Rogers, G.B., p 47-58.

106 McKenna F P 1993. *It won't happen to me: Unrealistic optimism or illusion of control? British Journal of Psychology*, 84, 39-50.

107 Irwin A and others, “No-one else wears one.” 2022, p 24.

108 Irwin A and others, “No-one else wears one.” 2022, p 25.

(iii) Labelling

Labels on vehicles are supposed to act as warnings, and this was part of the initiative within the change to standards which came in for quad bikes in 2020. However, labels are useful only if people both read and take heed of them.

The death of 6-year-old Myley Maxwell, referred to earlier, provides a salutary and tragic lesson in that regard. The quad bike had the following warning labels:

- “Improper ATV use may result in SEVERE INJURY OR DEATH”;
- “ALWAYS USE AN APPROVED HELMET OR PROTECTIVE GEAR”;
- “NEVER CARRY PASSENGERS”; and
- A red circle with a line drawn diagonally through it containing the words “Under 16” below it “Operating this ATV if you are under the age of 16 increases your chances of severe injury or death. NEVER operate this ATV if you are under 16”.

The Deputy Coroner on the inquest into Myley’s death, noted that “a critical factor in the circumstances was the willingness of adults to permit children to use quad bikes in ways which are far outside their intended use.”¹⁰⁹ Her Honour noted that “there had been public awareness campaigns, financial incentives to purchase quad bike helmets, the availability of free or discounted training programs.” She noted that the warning labels were prominently displayed on quad bikes and could not be clearer about the risks involved. She said:

In light of this it is discouraging to hear the evidence of (the child’s) parents that they had not read the warning labels on their quad bikes, that they were not aware of any advertising or awareness campaigns on the subject of helmet use or children riding adult-sized quad bikes, that they had a very limited understanding of the risks involved in such behaviour, and that they never required their children to wear helmets when riding quad bikes.¹¹⁰

Her Honour noted that families were “oblivious” to the risks until tragedies like this occurred.

The Deputy Coroner noted that there had been a number of quad bike deaths involving children and that the lessons did not seem to be being learned.

If parents are prepared to allow their own children including someone as young as six, to be a passenger on a quad bike, and to allow a 13-year-old to ride an adult-sized quad bike with another child on it, what risks are they prepared to take for themselves, without reading the warning labels or understanding the danger?

It has been noted in research that messages need to be repeated many times for cultural change to be embedded. This should form part of the media campaign.

109 Coroners Court of New South Wales, *Inquiry into the Death of Myley Maxwell*, 30 May 2019, par 97.

110 Coroners Court of New South Wales, *Inquiry into the Death of Myley Maxwell*, 30 May 2019, par 97.

3.7.2.2 Machinery issues

There are a number of aspects of working with machinery which affect safety in the agricultural industry.

(i) Design issues

Farmers report that a lot of machinery they require and use has not been designed to take account of Australian conditions. Most, if not all, of the machinery is imported. The result of the designs can be a build up of heat which can cause fire. This can be catastrophic for the machine, the area in which it is working and anyone in the vicinity. Farmers say they choose between undesirable options – risk the consequences of using the machine as designed, manufactured and supplied, have them modified, or modify them themselves. Machinery suppliers say they receive requests to remove guards and to make other modifications that affect the safety of the operator. The modifications regularly made by farmers include the removal of guards that would otherwise cause the build up of flammable materials. They say that keeping the guard on risks fire.

Farmers believe that, in removing the guard they will be sufficiently cautious to reach in and unblock any build-up of flammable materials. However, time and again this hopeful approach has proven to be disastrous. Many fingers, hands and arms have been sacrificed in this way, sometimes causing catastrophic injuries. Farmers need to be made aware and regularly reminded of procedures to safely deal with these challenges. DMIRS has a code of practice setting those out.¹¹¹

Farmer report of unsafe machinery

As part of his submission to the inquiry, a broadacre farmer included information regarding a piece of plant that he had purchased but which he says turns out to be unsafe. He had reported the issue to the dealer and the manufacturer but in spite of visits and inspections, no action had been taken to rectify the problem, leaving him with unsafe equipment. As part of his submission, he asked that the matter be raised with inspectors. I referred the matter to the regulator for attention. After some weeks of no response, the farmer inquired of me what was occurring. I made contact again with the regulator and was subsequently informed that while DMIRS understands the farmers plight, it does not inspect items of plant or equipment and provide approvals as hoped for by the farmer. One of the inspectors was to contact him and advise him of his options. This included that the most appropriate and expedient option would be for the farmer to engage an engineer who could assist the corrective action as meeting the requirements of the regulations.

DMIRS also advised that, at agricultural shows and other events, inspectors often discuss with dealers the brand-new machinery they have on display and regularly draw their attention to parts that are not compliant with the legislation. DMIRS is aware that “some agricultural machinery is imported into WA that is not compliant with our safety legislation and this is something that we would hope to work at, at a strategic level, with importers and resellers/dealers of equipment. It is though, more broad than WorkSafe’s sphere of control and would likely need to involve Consumer Protection and other government agencies”.

I note that Consumer Protection is part of DMIRS, along with the regulator. There appears to be no regular interaction between these sections of the one department. It is also indicative of a lack of resources being available for serious matters to be dealt with.

¹¹¹ DMIRS, *Code of practice: Safeguarding of machinery and plant*

(ii) Repairs “here and now”

When there is a break down or a fault in machinery in the middle of a paddock, away from immediately available, qualified and properly equipped help, the farmer is often under a deadline. So attempts are made to fix the machinery there and then. This sometimes occurs without access to proper safety supports such as proper chocking or jacking, or even on a surface not fit for jacking. It may require the machine to be running for a diagnosis and repair to be made. The result can and has been that the machine moves or falls, striking or crushing the person working on it.

(iii) Use of old or unsafe equipment and machinery

The agricultural industry includes many small businesses, small in worker number but large in landholdings, equipment, machinery and infrastructure. The farms often have large machinery such as those used to seed and harvest, as well as silos, shearing and packing sheds, stock yards and races. Some of the machinery and infrastructure may have been on the property for many years. For example, there may have been a tractor which is very old and has no roll-over protection, or a silo with a ladder but no protection around the ladder and no handrails.

Due to seasonal aspects of some operations, the equipment may be used for only a short period each year. Alternatively, it may only be used for an intermittent function performed only occasionally. Upgrading, modifying and replacing that equipment may be very expensive.

Farmers say they understand the particular quirks of their equipment and know how to operate it safely, in spite of the risks. They plan to replace or upgrade when they can, given the many demands on their time and resources – but not just yet.

This illusion of control referred to in respect of the operation of quad bikes is not limited to quad bike riding. It is also present in the use of unsafe equipment and vehicles. It is reflected in comments made during the community consultation meetings in this Inquiry. These included that a person thought they were safe “because I know what I’m doing”; “I’ve done it hundreds of times before”. It was also reflected in a farmer relating that he has a 50-year-old tractor. He knows that it has risks, but he knows how to drive it and so does his son. But he will not allow his workers to drive it because it is not safe for them. This story was re-told at a number of community consultation meetings to gauge the responses of those present. The reaction of a number of people at these meetings made it clear that this view is commonly held.

(iv) Service and maintenance accessibility

Farmers also report that it is difficult to have someone attend the property to service, maintain and repair their equipment due to both availability of service people who will travel and the distances required to be travelled from regional centres and from Perth. This extra distance adds to their costs. It means that, to the extent that they are able, the farmers service and repair their own equipment. Some do so regularly and thoroughly. Others do not. Newer equipment with computerisation is difficult for farmers to service themselves so they need to have professional help, which, as noted above, is not necessarily readily available, and when it is, it is costly.

(v) Retrieving bogged vehicles

Machinery and vehicles are required to move across land that may be either sandy or muddy and become bogged. Many farmers are not familiar with or educated in safely retrieving a vehicle from a bog. They may use inappropriate methods including attaching a towing rope or strap to a part of either the towing vehicle or the bogged vehicle, that breaks off under the extreme pressure involved in pulling the bogged vehicle. A number of deaths, severe injuries and near misses have occurred because pieces of metal are slung through the air at high speed when the metal part snaps or the rope or strap snakes through the air at high speed. I refer to the farmer who told me of his son's near miss, set out earlier.

3.7.2.3 Working alone

Many fatalities and serious injuries occur where workers work on their own away from immediate help.

DMIRS has a guidance note on working alone, issued in 2009. It contains particular details relating to the agricultural and pastoral industries, amongst others. Given the time that has passed and the development of new technologies, it may be appropriate for this to be reviewed.

3.7.2.4 Lack of communication with unsighted workers

A number of fatalities noted earlier in this report occurred when workers were undertaking a job together and either are unable to see each other, or if they can, one of them moves without the other knowing. This has resulted in workers being hit, reversed into or run over by a vehicle.

This is not unique to the agricultural industry. DMIRS has a guidance note dealing with these hazards.¹¹²

3.7.2.5 Crushing by animals

A number of fatalities and serious injuries occur when workers are moving or handling livestock. Some occur when the worker enters the yard or ramp with the livestock.

New methods of work and new or modified yards and loading ramps can avoid the need for some of this proximity.

The Victorian Government provided funding for farmers to upgrade equipment for loading livestock.

3.7.2.6 Reluctance to discipline unsafe workers

Farmers report that where a worker continually works unsafely, in spite of proper instruction and warnings, they are reluctant to dismiss them. Firstly, labour is in very short supply and the work is time-constrained. Replacing a dismissed worker threatens the performance of the business and puts additional pressure on those left to do it, adding to fatigue. Secondly, even if the farmer decides that the worker needs to be dismissed, they are not familiar with the proper dismissal processes and procedures and fear being pursued for an unfair dismissal with the time, cost and worry that it brings.

¹¹² DMIRS, *Guidance note: Safe movement of vehicles at work*.

3.7.3 Conclusion

There are high-risk activities that the agricultural industry has in common with other industries and some that are unique. There are known ways to deal with many of those risks and they are reflected in already existing materials. As noted in Terms of reference (f), (g) and (j), there are codes of practice and guidance notes. These can be modified and used to improve the health and safety of those engaged in high-risk work if they are accessible, known and applied. The Recommendation in that regard is an important arrangement that will improve safety and health.

Recommendation 7

7.1 The regulator and the industry engage with machinery and equipment manufacturers and dealers to draw attention to the need for machinery and equipment to be fit for purpose, to remove the need for farmers to modify them, especially by removing guards.

7.2 There be a repeated campaign of safety alerts to farmers regarding:

- their use of quad bikes without ROP;
- their riding vehicles, such as quad bikes, motorbikes and horses without helmets;
- wearing seatbelts;
- reading labels on equipment;
- safe jacking, chocking and retrieval of vehicles from bog;
- removing guarding from machinery.

This campaign to be targeted at the appropriate groups. It may feature well-respected senior farmers.

The campaign needs to run repeatedly for several years to embed the messages and practices in the culture.

7.3 That funding be made available for a specified period to encourage:

- retrofitting ROP;
- upgrading yards and races to assist in the physical separation of workers from large animals;
- lone worker emergency contact systems.

7.4 The regulator draw to the industry's attention the codes of practice and guidance notes for dealing with some of these well-known hazards.

3.8 Terms of reference (i)

Issues affecting the industry associated with environmental factors such as the global pandemic and external influences.

3.8.1 COVID-19 pandemic

With the closure of the Australian border to international visitors and the closure of the WA border to travellers from other states and territories, the agricultural industry was denied the services of international and interstate workers who make up a significant proportion of the agricultural workforce, particularly during peak seasons.

Australia has two programs for international workers that are most significant for the agricultural industry. They are the Working Holiday visas (known as backpacker visas) and the Pacific Australia Labour Mobility Scheme visa.

The horticultural sector was the most affected by the border closures. It has a relatively stable workforce of:

- 27,980 family members;
- 29,670 permanent Australian workers; as well as
 - between 33,410 and 50,850 variable contract Australian workers;
 - between 21,560 and 30,870 Working Holiday visa workers.¹¹³

ABARES estimates that there are approximately 146,000 workers in this sector of which 20 per cent are working holiday makers. However in 2019-20 to 2020-21, the number of the workers in the sector declined by around eight per cent or 11,100 workers. This was said to be mainly due to the reduction in the number of seasonal working holiday makers.

The total number of workers from the Working Holiday visa and other overseas programs used on farms is said to have declined by around 26 per cent or 9,800 workers in that period, on a year-round average.

The total number of Pacific Australia Labour Mobility Scheme workers declined by around nine per cent or 800 workers in that period.

Other sectors of the agricultural industry in WA also rely on holiday makers and other international workers. The grains sector and wine producers also rely on skilled workers from Europe and the USA at peak season in Australia who come from their off-peak times in their home countries.

This paucity of available seasonal workers has also occurred during times of record and near-record harvests in Western Australia, adding to the issues for the industry.

113 Department of Agriculture, Fisheries and Forestry, Australian Bureau of Agricultural Research and Economic Sciences, *Labour use in agriculture, analysis of survey results, 2019-20 to 2020-21*.

ABARES found that while the total number of Australian resident workers remained relatively steady, there were a number of adaptations that farmers used to enable production levels to be maintained and, due to the record harvests, exceeded. These included:

- workers, including family workers, increasing their hours of work;
- tasks that could be deferred, such as pruning and maintenance being put off.

Neither of these methods is sustainable. Personal well-being and safety is affected by fatigue, which results from the sustained heavy workload.

The WA Farmers Federation, Grains President, Mark Fowler, said in a recent interview on GWN7 News,¹¹⁴ that the farming community in WA is suffering from fatigue. He said that:

“the workforce is stretched to breaking point despite overseas backpacker numbers slowly climbing – injury and fatality rates are high”.

Mr Fowler said that he suspected that the increased workload and additional hours farmers have had to work could have contributed to these deaths. He also noted that existing family members including from the older retiring generation and teenage children, have had to work harder.

AgHealth Australia is currently finalising a literature review to identify current knowledge about the role of fatigue in the agricultural sector and to assess potential intervention approaches. However it reports that preliminary findings “suggest there is unanimous agreement that fatigue contributes to occupational injury in industries comparable to agriculture, however there is a scarcity of literature specific to agriculture and Australia”.¹¹⁵

Safety is also affected, along with productivity, when maintenance is not performed.

3.8.1.1 The future

A number of people commented to this Inquiry that the visa system is inadequate and not fit for the needs of the industry or the workers. They urged that while this is a Commonwealth Government responsibility, the State Government should work with the Commonwealth to create an agriculture visa which will enable workers to move from one property to another more readily, and to return each year for more than the short terms currently allowed.

While there is some optimism that the situation of worker shortages due to the pandemic and its consequences will ease quickly, others do not share this optimism. This is partly because the times for processing visa applications can be very lengthy, with some taking up to eight months.

Since these views were expressed to this Inquiry, on 26 December 2022, the Commonwealth Minister for Immigration, Citizenship and Multicultural Affairs, announced that the backlog of visa applications had been slashed. Significant resources were being applied to ensure they were dealt with. The Minister said that visas for Working Holiday Makers applying outside Australia are being finalised in less than one day.¹¹⁶

114 4 January 2023.

115 AgHealth Submission, 30 September 2022, pages 11 and 12.

116 Media release, Visa backlog slashed in time for Christmas, 26 December 2022.

While the visa situation may have improved and workers are returning to the industry from overseas, challenges remain in the form of the overall population numbers arising from immigration. It has been foreshadowed that the Commonwealth Government's *Population Statement 2023* will indicate that the longer-term results of the COVID-19 pandemic restrictions will be that Australia's predicted population will shrink by 473,000 by 2025-26.

UnionsWA also expressed concern about the safety of some workers who rely on their employer for the maintenance of their visa, where the employer treats them unfairly. UnionsWA notes that workers do not feel able to report workplace safety issues and injuries for a number of reasons including:

- fear of reprisals;
- the lack of any on-farm health and safety infrastructure;
- a lack of knowledge of workplace health and safety laws; and
- a lack of knowledge of who they can go to for help.

Increased and sustained proactive work by DMIRS may assist in alleviating some of the issues experienced by workers from a non-English speaking background. More inspections and relationship building with worker groups would be necessary.

UnionsWA notes that while abuse of visa reliant workers has been exposed in a number of reports including the report of the Fair Work Ombudsman,¹¹⁷ and their employers are prosecuted for criminal and industrial offences, such as under payments, those employers are not prosecuted for their breach of duty to provide a safe workplace. It says that DMIRS ought to place a greater focus on inspecting the horticulture sector in particular.

3.8.2 Competition for labour with a booming mining industry

Western Australia's mining, mineral exploration and on-shore petroleum industries employed a record number of employees in 2020-21 and again in 2021-22, with the mining industry responsible for the majority of that employment.¹¹⁸ The predictions are that the mining boom still has some time to run.

Miners have reported the need to pay higher rates to attract people to work away from home.

Many farmers who attended the community consultation meetings related stories of workers who were normally available to them taking up mining industry work. The mining industry also offers far higher rates of pay than the agricultural industry provides.

Once again, the lack of available workers places an increased burden on the remaining workers in the agricultural industry, adding to fatigue.

¹¹⁷ *Harvest Trail Inquiry: A report on workplace arrangements along the harvest trail, 2018, Australian Government.*

¹¹⁸ *Government of Western Australian, Department of Mines, Industry Regulation and Safety, Mineral and petroleum industry activity review 2021-22.*

3.8.3 Conclusion

While the visa situation appears to be improving, other issues of labour availability remain.

The competition for labour with the mining sector is affecting all industries in the State. However, it is a matter that the industry itself needs to deal with by making itself more attractive to workers, not merely in terms of rates of pay, training, accommodation but also relating to lifestyle.

The conduct of a small number of farmers towards their workers also needs to be addressed. Increased proactive activities by inspectors, as set out in respect of Term of reference (d) ought also to deal with this issue, in conjunction with DMIRS industrial inspectors and the Fair Work Ombudsman.

The recommendations in Term of reference (e), for the regulator to raise the industry's awareness of the consultation, participation and representation arrangements may also assist in overcoming these issues.

3.9 Terms of reference (k)

Other measures to support the ongoing resolve of the WHS regulator (the WorkSafe Commissioner) and the Department of Mines, Industry Regulation and Safety (DMIRS) to reduce fatalities and incidents on farms.

As I have noted a number of times in this report, a large number of agricultural businesses are based around the family, with few permanent paid staff, supplemented by seasonal workers at peak times. These small and medium sized businesses need assistance to improve their focus on safety and to establish or upgrade their safety practices and systems. Many are doing their best with limited capacity. Many have engaged external advisers, but many others are at a loss to know where to start.

3.9.1 DMIRS activity

DMIRS has previously participated in measures aimed to assist farmers to achieve the purposes set about above relating to safety. For example, it participated in the *National Agricultural Activity Plan 2014-2019* established through SWA. This Plan set out strategies to be delivered by state and territory regulatory bodies, both individually and jointly. It set out 42 activities. Of these only one was an activity to be solely undertaken by WA's regulator being:

"Agricultural safety projects involving an inspection campaign, training programs and focus on broadacre farming".

The progress reported in the Plan on this activity was that "this is an ongoing campaign to improve WHS capabilities of farmers on broadacre farms".

However, the information provided to the inquiry about DMIRS' proactive activities does not suggest any significant campaigns and no particular plan to deliver this activity, aside from ad hoc activities.

WorkSafe WA is listed in the Plan along with WorkSafe Victoria, SafeWork NSW and Comcare in a number of activities. There is nothing to suggest though that WA has prioritised or placed any increased focus on significant aspects of workplace safety in the agricultural industry. Those measures set out in Recommendation 3, 4 and 5 in particular, if resourced and implemented, will demonstrate and support that resolve.

3.9.2 Timely information

The *Coming home safely report* noted the "plea" by the Construction Contractors Association of Western Australia Inc. for "lessons to be learned" to be published earlier following an industrial incident. The Standing Committee referred to Safety Alerts issued in other states. It noted that the SafeWork NSW website contains a section for "Incident Information Releases", which are produced soon after an event and long before the conclusion of the regulator's investigation is complete, or any prosecution is considered. The Standing Committee noted that each release describes the incident, provides a photograph of the site of the incident, and provides advice to employers engaged in the industry. The Committee noted that the information may be similar to that given in the DMIRS' Safety Alert, but "it is more easily accessible and has more immediacy". It also noted that "moreover, the information releases appear to be published with more regularity, not simply focussed on matters that are new or unusual but dealing with incidents caused by existing known hazards".¹¹⁹

¹¹⁹ *Coming home safely report*, par 8.31.

The Committee also took the view that the “non-disclosure for fear of jeopardising possible future legal action” approach by DMIRS is “too cautious, unnecessarily restrictive and detrimental to raising public awareness of safety hazards and the measures required to avoid these hazards in a timely manner, thereby possibly putting lives at risk, contrary to the objects of the Act”.¹²⁰

Consequently, the Committee recommended that DMIRS make better use of Safety Alerts:

*for educative purposes and raising public awareness of hazards. Safety Alerts should be published by (DMIRS) after all fatalities and serious injuries occurring at the workplace, regardless of whether the fatality or injury was as a result of a common occurrence, to avoid a repeat of the incident pending completion of the investigation into its circumstances. Additionally, where appropriate, a further Safety Alert should be issued at the completion of an investigation, or to alert industry of any safety recommendations made by the Coroner as reported in an inquest report.*¹²¹

The Committee also noted that Safety Alerts are not easily located on the DMIRS website and recommended they be given prominence on the website.

I have examined the WorkSafe page of DMIRS’ website. It contains a total of nine agriculture industry Safety Alerts, the most recent being from 2020. The next most recent was issued in 2019 and dealt with deaths arising from quad bike use. At the bottom of the alert is a “Further information” section which contains links to four documents. The first and fourth of those links displayed a notice to say that the document could not be found. The second document was a brochure that contained information that it was last updated in 2014, well prior to changes to the law requiring roll over protection. The third was a poster which formed part of the same campaign as the brochure in the second document.

There is also within the links within documents, the *Agricultural safety and health checklist*. This contains a note that it was last updated in January 2017 and contains reference to superseded legislation. There is a link to the *Agricultural workbook* which contains information to say that it was last updated in 2014.

DMIRS’ website contains some very useful resources but they are not necessarily easy to find. Some information is relevant to industry generally, including the agricultural industry, but it requires knowledge of what is relevant and what is not. There are resources directly relevant to the agricultural industry such as checklists, workbooks and guidance notes along with safety alerts.

DMIRS has recently created a webpage for agriculture, and is building the materials contained in it. These need to be prioritised, checked for currency, and supplemented with materials from other WHS regulatory bodies’ materials.

The community consultation meetings and submissions to this Inquiry demonstrate that, like the Construction Contractors Association submission in July 2017, referred to in the *Coming home safely report* in 2020, the agricultural industry is calling out for safety alerts which provide them with timely information about recent incidents. Within the agricultural industry people know each other and are quickly aware of deaths and serious injuries. This often leads to speculation and rumours. However, they receive no authoritative information or guidance of a timely nature and all they receive is a notice that DMIRS is investigating.

120 *Coming home safely report, par 8.33.*

121 *Coming home safely report, Recommendation 54.*

If the delay in providing information is, as suggested by the *Coming home safely report*, out of fear of jeopardising possible future legal action, then this is detrimental to the industry taking up the lessons that may be available to them.

The Commissioner has also expressed genuine concern that the publication of this information may be insensitive and cause further trauma to those already grieving the death of a loved one. However, the community consultation meetings and other conversations I have had with people in the industry makes it very clear that they would prefer to receive information while it is current and in their thoughts rather than the speculation and rumours that are the norm in the absence of authoritative information. This concern could be ameliorated to a large extent by advance notice and support being provided to loved ones. This is already part of the role of the Family Support Liaison Officer within the WorkSafe Group.

Recommendation 8

That the regulator investigate and action a way to:

- provide timely information to the agricultural industry about the causes of fatalities and serious injuries as well as the preventative actions available to the industry;
- obviate the provision of that information compromising any potential prosecutions or potentially raising other legal issues; and
- ensure that families and others such as PCBUs and work colleagues of the deceased or seriously injured person are provided with advance notice of the publication and are supported.



Appendix 1: Insights, experiences and views from the agricultural industry during community consultation meetings

During the community consultation meetings a range of industry sectors and services to the industry were represented. Those who attended were open and willing to express their views candidly about a range of features relating to the industry, to the regulator and a number had useful suggestions and other contributions. A number of those reflections and insights had a recurring theme. The most common and helpful are listed below. They commence with reflections on the nature of the industry and its challenges, the views and suggestions in relation to the regulator and to other matters.

1. The farm is not just a business, it is a home and a lifestyle. This creates additional safety issues where farmers are always in the work environment.
2. Farming gets into your blood – it's not like other industries where people retire at 65. They want to be able to participate in it, to be part of the action.
3. Farming defines a lot of the older generation of farmers. They are proud of what they have built. Some older farmers want to die in the paddock. They don't want to talk about succession planning.
4. The culture in the majority of older farmers is that it has been the same since birth. It is ingrained, and WorkSafe needs to consider how to get through to different types of people.
5. People die every day. Twelve deaths in a year isn't a lot when you are dealing with life and death every day. The nature of the industry is risk. Things go wrong sometimes.
6. Some farmers do not have safety at the front of their minds partly because they have done the same hazardous thing 100 times before and got away without harm;
7. The chances of a farmer's unsafe practices being detected by work health and safety authorities are very low. Even if they are detected the consequences won't happen for a long time. The consequences or penalties don't bear thinking about.
8. The agricultural industry is not the same as the mining industry. Mining companies have huge resources, specialised WHS staff but most farmers do not. Farming does not have specialised workers. Farm workers usually work alone. We want practical solutions not bureaucratic system imposed on us.
9. Older, male farmers in particular have worked the same way for their whole life and either do not recognise the risk or believe they can manage the risk well.
10. Old equipment, plant and yards may have been modified or repaired but are not as safe as newer systems. Replacing them can be very expensive.
11. One risk around machinery is long hair. Employees need to take responsibility for tying their hair back. On the other hand, if they are not even aware of the risks, they need to be educated.
12. My old tractor is safe for me to drive because I am used to it and know its limitations. But it's not safe for my workers.



13. We can't afford to have people away from the farm for any period of training. Training needs to be close by.
14. Managing fatigue during peak times and with labour shortages and high costs, is a problem. Most of us are doing our best. We want our family and our workers to be safe. But we need help, not fear-mongering.
15. Most mining companies don't like to employ farmers because they have an attitude of getting the job done and not following procedure. Many farmers won't employ mining workers because they are focussed on procedure and not on getting the job done.
16. There are illnesses including cancers and deaths from exposure to chemicals but they do not get reported as work fatalities.
17. Since starting my consultancy business there has been a huge improvement in safety, but it isn't happening quickly enough.
18. It is common to disconnect alarms and remove guards. Manufacturers don't understand Australian conditions or the needs of the end user.
19. Diagnosing a fault on farm machinery often has to be done while the machinery is running. This requires safety to be bypassed so that the machinery can run while the operator is on the outside.
20. Farming is time-critical, often driven by the weather. Being in a hurry, under time pressure, causes people to make unsafe decisions. You can't be vigilant all the time.
21. Grower groups, wives and the younger generation are keen to develop the learnings from the past and to find safe solutions.
22. If research (AgHealth conclusions) says that 43 per cent of deaths are preventable, if already known solutions are available, those solutions need to be publicised and regularly reinforced, e.g. seatbelts, helmets, ROPS.
23. There is a lack of available, well trained and motivated workers.
24. We happily comply with the requirements our customers place on our produce for food safety and biosecurity, and we are happily audited because it affects our ability to sell our produce. There is not the same attitude towards safety compliance. The view is that safety compliance takes time and affects productivity.
25. How do I know of the safety consultant I engage is qualified and knows what they are talking about? There is no quality control.
26. There is conflicting advice amongst inspectors as well as consultants.
27. Small businesses need education and coaching on how to discipline or dismiss an unsafe worker without falling foul of unfair dismissal laws.
28. Business owners are reluctant to discipline or dismiss workers who refuse to comply with safety instructions because of the shortage of labour.
29. Health and safety representatives and committees are good in theory and in other industries but are not functional for most farms.
30. The pandemic caused a lack of backpacker labour for farms and businesses that service farms. We are competing for labour with the booming and high paying mining industry.
31. There is a shortage of suitable accommodation for workers.
32. Our business has informal pre-start and "toolbox" type meetings but we are very flexible and also have more formal meetings. Our workers have to be multi-skilled – we don't have capacity for specialists.
33. A considerable section of the agricultural workforce do not have a good standard of literacy or numeracy, and many don't have good English.
34. The introduction of the more draconian legislation has made people less inclined to employ workers, and to do things themselves. This has increased fatigue.

35. WorkSafe has a very negative image within the industry. People are reluctant to engage for fear of exposing themselves to potential penalties. This is especially so if the WorkSafe inspector does not understand farming.
36. Serious injuries aren't reported. People are fearful of being found to be liable and penalised. "No one in their right mind will report an incident or a near miss because of the big stick approach and fear of prosecution by WorkSafe".
37. The industrial manslaughter laws have been a catalyst for drawing attention to safety. On the other hand, WorkSafe has promoted the fear of prosecution, gaol, significant fines, destroying the farm and the family.
38. WorkSafe puts out media statements immediately after an incident saying they are investigating. They need to tell us what happened and what we can learn from it.
39. Safety training is often viewed as a waste of time. The regulator ought to have an active education arm.
40. The WorkSafe Commissioner's reported comments that the industry puts profits ahead of lives was shocking, offensive and unhelpful.
41. The WorkSafe Commissioner is to be applauded for instigating the inquiry and for looking for ways to improve agricultural industry safety. We want the State Government to help us improve, not just to criticise.
42. The State Government provides the industry with no assistance or leadership.
43. WorkSafe's website is not easy to navigate. It does not contain a comprehensive agricultural industry section. What information there is, is hard to find and not always up to date. It needs to provide up to date information including information about what licences are necessary, and safety alerts that are timely and up to date.
44. The WorkSafe inspectors' role ought to be more educational and advisory.
45. WorkSafe has resource issues and is doing reactive work, not education.
46. WorkSafe seems more intent on protecting its prosecution process than on giving out prompt information.
47. In aviation, investigations and alerts are done very quickly after an incident. This is not the case with WorkSafe.
48. In the mining industry the company does an urgent investigation and the results are published to the workforce very promptly.
49. Mining inspectors have a positive mindset and do regular inspections. WorkSafe inspectors do not have time or resources to do the same in agriculture.
50. When people start self-reporting, then it will demonstrate trust in WorkSafe. Until then they won't self-report.
51. WorkSafe should have a 12-monthly plan of farm visits, and seminars in local and regional areas, focussed on education.
52. Farmers need to be informed about fatalities, the cause and how to avoid it. They need that information soon after the incident, while it is fresh in their minds.
53. Farmers are given little in the way of practical, "how to" and "how not to" guidance, for example, how to safely retrieve a vehicle from a bog.
54. The sale of unsafe devices such as snatch straps for retrieving vehicles from bog should be banned.
55. There needs to be a visa flexible enough and readily available to meet the needs of agriculture. The current visas are not suitable.
56. Safe Farms WA's Green Card is seen as an excellent program aimed at base level skills for working in agriculture. The program needs to be adapted though to make it more sector specific. This could be a program developed in conjunction with grower groups.

57. "2 WorkinOz" is also an excellent program aimed at getting overseas workers with an introductory level of training. This should be more supported.
58. Farm Safe Australia has some excellent posters with safety reminders. They could be easily adapted and targeted to each sector of the industry.
59. Training courses such as those offered by registered training organisations for things like driving forklifts spend too much time on theory and padding and not enough on actual skill.
60. Farmers ought to contribute to education and safety campaigns via a levy on produce.
61. Foreign workers often have very different views on safety and in some cultures, saying yes is the only acceptable answer even if they do not understand, agree or act on the instructions.
62. Where is the money to get the message out and keep reminding people, as there is in the road safety campaigns? Farmers are often blind to risk. A visit from someone with a fresh set of eyes would be helpful.
63. Farmers like to learn from farmers. They like to learn from case studies and examples.
64. Fines from prosecutions should be used for education and safety campaigns.



Appendix 2: WorkSafe's proactive activities

Agricultural sector proactive initiatives by DMIRS 2020-21 to 2021-22

2019

- Turf farming inspections – Industry engagement, stakeholder liaison and safety talk with members of the sector

2020

- Shearing contractor safety information project – engagement with the shearing industry
- Feed lot inspections stakeholder liaison – issues such as management of the safe movement of livestock, cattle yard safety, working under powerlines, dust management and quad bike safety led to greater inspections. Feed lots located in the south-west, northern and eastern wheatbelt and the great southern.
- SafeAg WA social media campaign – assisted in scripts and staging for short clips filmed to educate the stakeholders in relation to safety in agricultural workplaces
- “Child safety on the farm”
- “Safety in the workplace”
- Market gardens regional and metro stakeholder engagement – notices issued, liaison with industry groups. Many of the “Mum and dad” stakeholders inspected for the first time.

2021

- Dowerin Field Day Industry engagement – management of the event, from set up to pull down, traffic management, volunteer management, prior site hazard inspections. Issues identified with the new quad bar required to be attached to new quad bikes available to be sold.
- “Helmets on horseback” project – A safety alert has been published following the issuing of improvement notices regarding the non-wearing of helmets while horse riding in the workplace.
- Farm safety presentation to farmers – Wyalkatchem.
- Livestock saleyard regional inspections – this led to significant changes to infrastructure and safety management. Work with Elders is ongoing, and the Boyanup saleyards made much safer for work and the public.



2022

- Farm safety presentation to Farmers Federation members – Northam.
- Farm safety presentation to Women in Farming group – Wagin.
- Dowerin Field Day – inspection of site set up etc large display of agricultural safety showing farmers the progress of safety through the generations. WorkSafe checklists, and other materials provided. Inspections of plant and machinery have led to a range of improvements.
- Safety fact sheet – side by sides, research has led to publication of an information sheet on the website.
- Women in Farming – Safety Strategy for 2022-23 – a strategy developed by stakeholder group Women in Farming with the assistance of WorkSafe to conduct a series of webinars, workshops and inspections.
- Safety contractors, agricultural industry groups and regional trainers – ongoing engagement with the following to assist them in the delivery of information aimed at assisting with compliance:
 - Small businesses who provide safety and health information to agricultural stakeholders;
 - Safety contractors who provide advice on safety management plans;
 - Agricultural Industry Groups;
 - Regional Safety Trainers.



Appendix 3: Recommendations of the Report *An industry engagement report for the Agricultural Working Group of the Commission for Occupational Safety and Health, March 2022*

1. Strong leadership is required from the farming industry bodies to make the sometimes unpopular decisions for the good of the industry.
2. Determine who will be responsible and lead farm safety in WA. Who will liaise with the regulator? If it is determined to be the AWG for either of these roles – review the structure and review the strategic plan.
3. Review the structure and other state farm safety bodies and the safety advisory committees to determine the best model and fit for WA.
4. Lobby the state government for support and funding to assist in educating the agricultural industry and raising awareness of farm safety.
5. Engage with agricultural industry representatives and farm safety providers to determine the way forward. Government bodies engaged directly in agriculture should also be involved, including the Department of Primary Industry and Regional Development (DPIRD) as they are the gateway to the farmer, along with the Commissioner for OSH.
6. Conduct an audit of the farm safety space to determine who is involved and offering programs and advice to assist farmers.
7. Invest in a communications strategy that allows all bodies to deliver the same message via their respective channels, and that also targets the different age segments within the farming sector.
8. Utilise “champion” farmers who have adopted farm safety systems or had an on-farm incident to help spread the farm safety message through peer-to-peer learning via case studies, field days, workshops, and other events.
9. Create a network of working demonstration farms that focus on safety which could be set up to allow other farmers to learn how a safe farm can be profitable while keeping workers safe.
10. Investigate the opportunity for independent on-farm audits (that are in line with WorkSafe audits) that will help farmers identify the risks without fear of prosecution.
11. Liaise with government and the regulator to provide accurate farm safety information, resources and data that are industry specific and that will remove the responsibility from industry groups in providing it to their members.
12. Incorporate better use of technology to help make safety management, check lists and reporting simple and inexpensive.
13. All work hard to dispel the myth that being safe makes us less of a farmer, a change in culture will only occur if we make it socially acceptable (to work safely).





Appendix 4: Public notice of the Agricultural Industry Inquiry

Announcement of the Inquiry

- The WorkSafe Commissioner's website
- West Australian newspaper
- Kalgoorlie Miner newspaper
- The Countryman newspaper
- WA Today
- Business News
- National Tribune
- Albany Advertiser
- Albany Extra
- Geraldton Guardian
- Great Southern Herald
- Manjimup-Bridgetown Times
- GWN7
- Channel 7
- ABCTV
- ABC Radio - Statewide, Perth Regional
- MMM network

Terms of reference, invitations to make submissions and community consultations

- The WorkSafe Commissioner's website
- West Australian
- The Countryman
- Farm Weekly
- Albany Advertiser
- Bunbury Herald
- Esperance Weekender
- Geraldton Guardian
- GWN7
- ABCTV
- ABC Radio – Statewide, Perth, Regional, South-West, Great Southern
- MMM network
- 6PR





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