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OHS court win great news for farmers

The NSW Farmers' Association has helped to bring about a crucial High Court decision which will provide greater fairness to farming employers in OHS prosecutions.

Through the Australian Farmers Fighting Fund and the National Farmers' Federation, the Association financially supported its Member Graeme Kirk's High Court appeal against prosecution for an on farm fatality.

"The High Court of Australia has ruled that the NSW Industrial Court had made a jurisdictional error in the way that it had reversed the onus of proof in the proceedings against NSW Farmers' Association Member Graeme Kirk and his company," said NSW Farmers' Association Industrial Spokesman Graham Morphet.

"It also ruled that the NSW laws that sought to restrict OHS appeals to the Industrial Court were unconstitutional," he said.

Graeme Kirk is an absentee primary producer. His farm manager, who for all intensive purposes operated the farm, was fatally injured when the farm's 4 wheel motorcycle rolled on him after he had cut the corner on a steep road whilst dragging fencing equipment. Kirk and the Company were prosecuted in the Industrial Relations Commission (IRC) of NSW in Court Session with the Company found guilty of a breach of the general duty of care, an absolute liability offence with narrowly constructed defences. Kirk was found personally guilty under the provisions that automatically deem directors guilty of an offence unless they can make out a defence of due diligence.

"This win has helped create a common sense decision for NSW OHS legislation, which had reversed the onus of proof on farmers and other employers, requiring them to prove innocence," he said.

"The NSW Farmers' Association has constantly called for the removal of the reverse onus of proof for OHS prosecutions and welcomes the proposed Federal OHS laws which don't seek to reverse the onus of proof," he said.

The Association also welcomes the recognition that it is not reasonably practicable for a farmer to conduct daily supervision of employees and contractors, with Justice Heydon saying:

The suggestion that the owners of farms are obliged to conduct daily supervision of employees and contractors – even the owners of relatively small farms like Mr Kirk's – is, with respect, an astonishing one.

"This successful appeal is a win for all our Members, recognising as it does common sense in OHS cases," Mr Morphet concluded.

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