

Occupational Health and Safety and Contract Poultry Farming

The NSW Occupational Health and Safety Act places a duty upon employers, self employed persons, employees and others with control at the workplace. This duty is to ensure the safety of any person whose safety may be affected by the undertaking of work. Contract poultry growers who have contractors belonging to their processors (a third party) on their farm, fall under “others with control at the workplace”.

This responsibility for safety is limited to the amount of control that the contract grower exercises. This could include circumstances in which any person is using infrastructure or systems established by the contract grower for the purposes of work on behalf of any party.

These duties are what are described as “absolute duties”. That is a breach of the duty is found if risk to health and safety can be proven to arise. Cases in NSW have shown that a breach of this duty may be found even when an employee has been careless or wilfully disobedient.

The OHS Act has a further offence when a workplace death occurs. This offence deals with workplace deaths in which reckless conduct of a duty holder under the Act is a substantial contributing factor. For a person’s conduct to be considered reckless it requires a person to be aware of the risks associated with their actions and omissions and have knowledge that death or serious injury is a possible result of their conduct.

Unlike the general duties explained above this offence is not an absolute duty. Rather it requires that the prosecution to prove beyond reasonable doubt that the actions or omissions of the duty holder were reckless; and that they substantially contributed to the death.

Contractors and Control

It is a well established legal OHS principle that duties cannot be contracted away in any agreement. The degree of control of workplace risk by a farmer as assessed in the State law cannot be diminished or increased by words in an agreement appearing to pass it onto another party.

In 1994, a case involving a death on a poultry farm when a contracted builder was engaged to undertake maintenance on a roof gives an example of when a farmer had no control in the cause of an accident. In the judgement, the court found that the accident was not due to issues under the control of the farmer; rather it was caused by the system of work adopted by a licensed builder. It was also noted that the farmer had gone to lengths to manage issues under his control, such as ensuring that the electricity to the shed was isolated prior to work commencing.

How to manage OHS and Contractors

Managing OHS issues involving contractors (or contractors belong to third parties) should be integrated into your farms OHS system. This is best done through establishing an OHS risk management system on your farm, using consultation with workers and contractors (and the contracting third party) to assist in the identification of hazards and the management of risks.

Further, providing contractors with farm specific inductions and further induction when dealing with higher risk areas such as shared pedestrian and industrial traffic areas will help to manage the OHS risks associated with the use of contractors.

Fax out induction materials to processors requesting they give the induction material to their contractors. This action covers farmers when contractors arrive at a farm unannounced.

Recent Developments

Recently the Association supported a member when WorkCover commenced prosecution after a fatality involving a specialist trucking contractor. The contractor was fatally electrocuted when tipping lime under an overhead powerline instead of the established fertiliser dump site.

At no stage had the Association member been contacted by the trucking contractor after ordering the lime from the local rural merchandiser. The Association argued that there was little control that the member could have exercised in the situation.

Based upon the members not guilty plea and lobbying from the Association, WorkCover chose to withdraw the charges.

For more information on how to manage OHS and workers compensation insurance, contact the NSW Farmers Industrial Association on 1300 794 000 or visit our website www.iressentials.com.au