RURAL AND REGIONAL SERVICES AND DEVELOPMENT COMMITTEE

Inquiry into cause of fatality and injury on Victorian farms

Canberra–22 January 2004

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Witness
Professor N. Gunningham, Member, National Research Centre for Occupational Health and Safety Regulation, Australian National University (affirmed).
The CHAIR — Welcome, Neil. Under the powers conferred on this committee by the Constitution Act and the Parliamentary Committees Act this committee is empowered to take all evidence at these hearings on oath or affirmation.

I wish to advise that at these hearings all evidence taken by the committee, including submissions, is granted immunity from judicial review under the provisions of the Constitution Act. I also wish to advise that any comments made by yourself outside the committee hearing are not protected by parliamentary privilege. We are a joint parliamentary committee, an all-party parliamentary committee, hearing evidence on the inquiry into causes of fatality and injury on Victorian farms.

Thank you very much for giving us your time today. Could you provide us with your full name and address and tell us whether you are attending in a private capacity or representing an organisation and, if so, your position in that organisation?

Prof. GUNNINGHAM — I am a professor within the regulatory institutions network at the Australian National University, and in particular within the National Research Centre for Occupational Health and Safety Regulation. My address is Garden Wing, University House, Australian National University, Acton, 6200.

The CHAIR — Thank you. Your evidence will be taken down and it will become public evidence in due course. If you would please give us your presentation, and then afterwards we may have time to ask some questions.

Prof. GUNNINGHAM — Good, thanks. I will mainly talk about farm machinery, because that is the subject I have been involved in and written some reports on, but I will be happy to respond to some questions about agricultural chemicals as well, since I have also done some work in that area.

Thinking about farm machinery, it is a complex issue and, of course, it has implications at every stage in the supply chain, but time is limited for me to give a presentation and I am not going to focus on the responsibilities of manufacturers or designers. That is important, but the reality is that 90 per cent of design takes place outside Australia, so your committee cannot really do much about it. So let me focus on the things that might be of more relevance and that you can do things about — namely, at the end of the supply chain and what you do in terms of targeting farmers, farm workers, et cetera. So that will be the main focus, and I am happy to respond to questions.

There are maybe five different things to think about in policy terms that policy-makers might want to engage with. The first is training, information, volunteerism et cetera, and I just want to make a couple of quick points about that, as it is not my main focus.

The first point would be that there is no doubt an important role for training, information et cetera and that one of the key elements of that is how you do it. In a sense, I think the role of government is to be wholesalers of information, not retailers. In a sense, you need government input and the resources it can provide, but the sources that are most trusted by farmers are not government, with respect; of course, they are those much closer to farming communities. So irrespective of the precise mechanisms you use, it is helpful for government to collect that information but to use farmers federations and others who are trusted by farmers as the vehicles for getting that information across. That is the first point.

The second one is that although in Australia and elsewhere with agriculture we focus almost entirely on education, information and volunteerism as the ways to achieve results, I would have to say as clearly as I can that education, information and volunteerism alone have not been effective in achieving results. They have a place, they are important, but if you rely exclusively or primarily on those mechanisms you are likely to fail. That is at least what the evidence would suggest.

There is no reason in principle why the agricultural sector should be treated differently from, say, manufacturing. It is not a coincidence that with industrial pollution we have regulated the manufacturing industry for 30 or 40 years. There is a reason for that. Putting it bluntly, when Moses came down from the mountain he did not come down with the Ten Guidelines, he came down with the Ten Commandments, and there is probably a reason for that. So I think it is important to put volunteerism in its place.

Mr McQUILTNEN — I like that one.
Prof. GUNNINGHAM — I am not rejecting a role for information, training and volunteerism, but I think it is only a part of the picture.

Moving on, there is an important role for incentives, principally positive incentives in terms of things like subsidies. The farming sector is not rich, it struggles in many respects. If you want to achieve change, one important lever you have got, if government has the money, is to provide incentives. For example, in relation to workers compensation premiums, if you provide a discount on workers compensation premiums for those who engage in relevant training, that is one positive vehicle to encourage farmers to explore training options.

Subsidies also have a role. I refer to the success of the ROPS scheme; I think rollover protection for tractors is an interesting example and it is not a coincidence that subsidies were needed as one instrument to persuade farmers to engage with what was going to be quite an expensive change for them. So I think we have to take account of the role of subsidies, but at the same time the pot of money that government has to distribute is always going to be limited, and therefore you do not have the possibility of just chucking out money indiscriminately; you have to use it wisely and well. Again it is not a complete answer.

I also think there is a role for worker participation but that that is a very challenging issue in the agricultural sector. We do know in occupational health and safety generally that worker participation, consultation and involvement through safety committees and safety representatives has been a very positive influence on health and safety over the years. It not only sensitises employers and perhaps pressures them to engage more seriously with safety issues, but also those who in a sense own the issue — that is, the workers themselves — are likely to pay much more attention to it. But when we come to agriculture, of course, worker participation is really difficult, because we are talking about small workplaces, low levels of unionisation by and large, and widely dispersed workplaces, so it is the complete antithesis of the big manufacturing company which has a well-organised trade union.

So what do you do in that situation? I would encourage the committee to reflect on recent European experience, where at least in some countries, starting in Scandinavia but now moving out to the UK and elsewhere, there has been exploration of the role of what are called roving safety representatives, who are trade-union appointed and who would pop in their cars and go around a whole variety of workplaces talking to workers and to employers. But the key to that initiative is a consensus approach.

You really cannot in an agricultural context succeed as a trade union by trying to bludgeon your way in. Farmers will simply not open the farm gates. So the way that initiative has succeeded is through a consensus approach which involves all the stakeholders, and it particularly has to engage with the farmers federations.

So unless it is a cooperative enterprise it is not going to work, and that is what the British trade unions found out.

But having realised that, I think it has considerable potential, and it should be experimented with on a modest scale in Victoria.

There are a number of other areas where I think regulation is particularly important as underpinning everything else that you do — your incentives, education, volunteerism and so on. Yet regulation faces big challenges because of small workplaces widely dispersed, large numbers of farmers and very small numbers of inspectors. What can the inspectors do, faced with the mass of farms they have to engage with?

You have to think of this smart regulation. For example, we talked briefly about an experiment in part of the United States. When you deal with that sort of problem you encourage farmers to undertake self audits. You send them a piece of paper saying, ‘You are dealing with issues A, B and C. Here are the three biggest challenges with issue A. In relation to these, are you doing 1, 2, 3 or 4?’ You keep it short because they are not going to answer more than two or three pages, but it prompts them to engage with the problem, ‘Am I storing those chemicals properly? Perhaps I am not’.

What is the response rate if you simply send farmers out that letter with nothing else? The answer to that is 2 or 3 per cent. It does not achieve much. But if you send them a letter saying, ‘We, the Minnesota regulators’ to use an example, ‘have identified the following three farm safety issues as a high priority area. We are going to engage in a blitz’ — we will use more gentle language but basically the message will come across that we are going to blitz farms in relation to these three problems over the next six months — ‘however, as an alternative to confronting a blitz we would be delighted to engage in a partnership approach with you. Here is our self-audit form, please reflect on it, fill it in, and if you return it to us having properly contemplated it you will be exempted from the blitz process but if you want any more advice and information from us, we will be delighted to provide it,’ the response to that
sort of letter is closer to 70 or 80 per cent. There are, even with limited resources, smart ways to engage with regulation.

To an extent also as a regulator you have to use a certain degree of bluff. Farmers do not actually know how few regulators there are and how unlikely they are to be regulated, but this is the time-honoured strategy of the tax office and many others, so it just needs to be extended to farms.

There are two particularly sensitive issues about regulation. One is what sort of standards you want to apply. Traditionally we use highly detailed specifications or technology-based standards. We tell the farmers exactly what sort of equipment they need and what specifications to meet, and the problem with that is that technology changes quite quickly but regulations do not, so the danger with that highly detailed approach is that it becomes outdated very quickly.

The more modern approach, where possible, is to use performance standards. You simply tell farmers what outcome you want them to reach but leave them the flexibility to figure out the least costly way of reaching that outcome. That has its attractions but many small employers like farmers feel they are not sophisticated, they just want to be told what to do, not to be left a lot of discretion.

There may be a middle ground between those two approaches where in the regulation you simply say, ‘This is the outcome we want’, but you would accompany that with technical guidance notes or a code of practice which provides a whole bunch more detail for those who want someone to hold their hands, and I think that is perfectly legitimate as a balanced approach.

Sometimes the area we are trying to deal with is so vague and amorphous that we cannot use performance standards or technology-based standards. We ask the farmer to identify the hazard, prioritise the risks and then respond to those things that are highest risks. That is a useful fall-back position where you cannot do anything much more specific, and indeed it is the basis of many things which are in the national standard on plant, and it has its role in other national standards.

The other sensitive issue is enforcement. Many people, including me, would argue that legislation that is not enforced and is perceived not to be enforced will be ineffective. That is not to say that I think an inspector should race around the countryside with a big stick bludgeoning farmers over the head with it. It is to suggest that where all other things fail, where persuasion, encouragement and positive incentives fail, you need what we call the top of the enforcement pyramid. You need a big stick and you need to use it. You are only talking about the recalcitrant 5 per cent or 2 per cent or something, but if you do not enforce or publicise the enforcement against the real recalcitrants, then you undermine the credibility of your entire regulatory system. I do not want to make myself misunderstood. I am not talking about aggressive enforcement across the board at all; I am just talking about the tip of the regulation pyramid.

The last point I would make in presentation is that we are dealing with complex problems. There is no single solution that will work across the board so by and large we need a combination of policy instruments, what I would call an optimal regulatory mix. For example, the ROPS example has been a success. What happens is that we try education and information. We tell farmers there are very high levels of fatalities and we can reduce that a lot by putting on rollover protection, and a limited number of farmers listen to that and respond to it but many do not.

So we figure it is not working well enough and we follow it up with incentives, positive subsidies, and that gets you a bigger take-up; but still quite a few farmers will ignore it because maybe the subsidy is not big enough or maybe they are just too conservative or they are just too busy. The truth is that incentives only took you so far. Then with a consensus approach with a whole range of stakeholders including farmers federations as well as trade unions and others we say, ‘Look, we still have unacceptably high levels of fatalities. We have tried education and it has only taken us so far. We have tried subsidies and they have only taken us so far. It is time to bring in enforcements. It is a breach of the regulation not to have rollover protection, you must have it, and we give you the following administrative notice that if you have not done it within a year, we are going to start enforcing’, and then we do that. Then we get a higher take-up still.

It is the combination of those mechanisms that works, so you do not as a regulator start off with the big stick in prosecuting people. That is the last thing you do. But when everything else has failed, if you want to reduce fatalities caused by rollovers, that is what you need to do. Again I go back to my original message: if you just rely on volunteerism alone, it will not be enough. I will be happy to respond to questions but I think I have to stop there.
Mr CRUTCHFIELD — You gave the example of ROPS on tractors — the retrofitting. Going to ATVs, there is a whole spectrum of either regulation or education, from banning them completely to fitting ROPS on them, to licensing, to wearing a helmet being either optional or mandatory, to let it rip — which some people advocate. Where do you sit in respect of ATVs, or do you recognise it as an issue?

Prof. GUNNINGHAM — I absolutely recognise it as an issue. Now we have handled ROPS on tractors, ATV is absolutely a priority issue. Unfortunately I have to duck the question because a lot has been happening quite recently since I moved on to other projects. I am reticent to talk about the specifics of ATVs because I have not kept up with the developments recently. I would rehearse what I said earlier. I cannot comment on the most recent technology in relation to ATVs et cetera, I am not up with that.

Mr CRUTCHFIELD — But cutting out non-engineering stuff?

Prof. GUNNINGHAM — Okay, cutting out the non-engineering stuff, accepting there is a problem I would go back to general principles. I would say that the nature of the problem is not dissimilar to that with tractors. You have a particular type of vehicle where there is evidence of a hazard.

Then what would I predict? I would predict that a voluntary approach alone will not be sufficient. If manufacturers or whatever issue handouts to users, that will not be enough nor will it be enough if governments issue handouts to users, you will still have a big problem on your hand including an unacceptable level of fatalities. Therefore if you wanted to engage with it you would have to use a combination of policy instruments, and I would be looking at very much the same number of policy instruments as I talked about in relation to ROPS because I think the nature of the problem is strikingly similar, but I would not want to engage with the technical details. Does that answer your question?

Mr CRUTCHFIELD — Yes.

Mr INGRAM — A paper presented to us is entitled Regulating Farm Safety: Towards an Optimal Policy Mix, which is working paper 2. There are a couple of things I would like to pick up within that. You commented on child safety on farms. You state that in Canadian jurisdictions as well as in the UK there is a regulatory process to limit young people’s use of ATVs. Some of the statistics show that there is a risk for children under 15 or 16 riding the higher horsepower, larger machines. Do you have any information on exactly how those other jurisdictions are regulating that? Is there an age restriction or limitation mix, or how is that done?

Prof. GUNNINGHAM — Again I am not sure I can engage with specifics. My recollection is that in the Canadian case there was simply an age restriction, but again in relation to ATVs there is a gap. The technology is moving on rapidly. There is a gap between the time we did this research and the technology now, which makes me reticent about going into the finer detail. I do think that in principle one role of legislation would be to impose an age restriction.

I guess in crude terms maybe the analogy is you let young kids ride a push bike but you do not let them ride a motorcycle before a certain age because a motorcycle is much more powerful. Just going back to general principles, you need an age restriction in relation to more dangerous technologies.

Mr INGRAM — The other point I picked up out of that paper relates to second-hand and used machinery. In particular you had an example of the responsibility of second-hand retailers to make sure that there were no modifications to either tractors or ATVs because if there were, then they were arguably liable for the modifications. Could you expand on that?

Prof. GUNNINGHAM — To the extent that second-hand tractors et cetera is a serious problem in the sense that those that are imported from Asia in particular may not meet adequate standards. The question is at what point in the supply chain can you intervene to effectively get action? It is too late, to an extent, when you have got down to the end user who is almost by definition looking for the cheapest machine which is why they are buying a second-hand Asian tractor. So at what other point in the supply chain can you intervene? One point would be with the suppliers themselves and requiring that they undertake in effect a screening before releasing that machine on to the market. I would argue that that is a credible way of minimising harm.

Mr INGRAM — So if a machine comes in here that has been modified, which makes it unsafe and you use the example of an ATV with a water tank that does not meet the specifications, that should be screened then and that is one way of regulating without putting major impacts on the end user?
Prof. GUNNINGHAM — That is absolutely correct.

Mr WALSH — We have heard a lot about the different state jurisdictions and how that is an impediment to good OHS, and you obviously agree with that. Could you enlarge a bit on what you see should be done to take away those impediments?

Prof. GUNNINGHAM — I sigh because it is difficult. First of all it is very clear that that is a serious problem. Manufacturers, for example, or companies themselves who operate across a number of Australian jurisdictions see it as an unnecessary impediment and cost and frustration, and they are quite right to do that because it would be highly desirable in principle to have national uniformity. The body in the best position to coordinate such an initiative is the National Occupational Health and Safety Commission, but we operate under a system of cooperative federalism.

That is to say, occupational health and safety regulation is traditionally regarded as very much a state responsibility although under the constitution there are a few ways the commonwealth could choose to intervene, but it does not — ratifying international labour organisation agreements et cetera. Under cooperative federalism the federal government tries to persuade the states to adopt a uniform response. They have been extremely reluctant to do that. I think regrettably the federal government no longer pursues the approach of national standards through the National Health and Safety Commission — so I think returning to the idea of national standards is desirable but the experience of previous national standards was that the commonwealth comes up with a template, they thought they had reached agreement with the states, but then each state exercises considerable discretion in how it interprets that template and you still end up with considerable inconsistency between the different jurisdictions. Within cooperative federalism it is hard to know how to overcome that.

Mr WALSH — But we have done it with food standards, haven’t we? We have national food standards to get away from the issue of different food standards so it could be done if there was the will to do it.

Prof. GUNNINGHAM — It needs the political will, that is the case; but it has been the history that even when you have all state ministers together with the commonwealth and tripartites and all the rest of it and they come up with a national standard of plant or whatever else, the states then go away and say, ‘Yes, we will implement this’, but each state says, ‘No, we do it this way’, and the other state says, ‘No, we do it this way’. There has not been the political will to maintain credible uniformity. It could be done but only if there is the will.

The CHAIR — Do you think part of the problem might be at a ministerial level, that they are talking at a ministerial level but not at a departmental level?

Prof. GUNNINGHAM — I do not know that to be the case but it may well be the case, and I think part of the problem at least is that in each individual administration — Victorian or New South Wales — the departments concerned say, ‘This is the way we do it, nobody is going to tell us how to do it’. That is the level at which uniformity falls apart.

Mr WALSH — Do we need states any more?

Prof. GUNNINGHAM — I do not think I had better buy into that!

Mr MITCHELL — I read about the second-hand machinery, and I also believe that is a problem. What are your thoughts on having the vehicles purchased from a clearing auction or something like that requiring something before transfer of ownership and particularly when going into a business, like a use-worthy certificate or a roadworthy type certificate?

Prof. GUNNINGHAM — I had not given that one much thought, but as you raise it, it seems an entirely plausible and potentially workable suggestion. I have not reflected enough on it but on cost effectiveness terms it might well make good sense. We have models with car safety generally and so on so there is no reason why you could not extend it as you have said. I take that as a valuable insight which I had not thought about.

Mr MITCHELL — On grey imports, you mentioned the stuff that comes from Japan and so on. How big an issue do you find that to be? What would be your views on how you could curb that activity or regulate it in such a way as to ensure that you are getting a decent product in?
Prof. Gunningham — That is difficult. My understanding, which may be a little outdated now, is that the biggest problem tended to be in Queensland for various reasons, so it is significant in some jurisdictions. That would be my response to the first part of your question.

How to deal with it? You could impose import controls but it is difficult to target just one particular area, and I go back to suggesting that probably the best point in the supply chain to engage with that would probably be to impose legal responsibilities on suppliers. Then, if suppliers found they could not meet their legal responsibilities and still make a profit, there would be no market for it and there would be no more imports of it, so the market would take care of it, provided you focus on at least one point of the supply chain where you make the most difference. I think the supplier is that point.

The Chair — Any further questions?

Prof. Gunningham — Could I just make one point. The paper you have been looking at relates to farm machinery safety, and that is what we have talked about so far this morning. I will tender either here or subsequently another paper we have done addressing agricultural chemical regulation, which I think is also relevant to the concerns of this committee. I will simply either give you that now or subsequently.

I would like to make in 2 minutes, if I may, just one point about that, because we do not have time for a general discussion. I just want to talk about the New South Wales cotton industry as a different way of thinking about the problems of dealing with these things.

What we had with the cotton industry was a very serious chemical problem, both an occupational health and safety problem and an environment problem. You may remember that at the end of the 1990s endosulfans had got into beef as a result of spray drift from cotton farms and that beef exports were being banned, and the reputation of the cotton industry was extremely low as a result of all that. There was a crisis, and what has happened since that time is that the industry itself, through a self-regulatory initiative, has developed best management practices. They have now got about 50 per cent of the industry signed up to that.

They are now developing second-party audits of the BMPs. The level of endosulfans in rivers has dropped to something like 57 to 59 per cent — that is to say, they could claim considerable success under a self-regulatory initiative. And yet, at the same time, it would be difficult for them to continue that process because they have already, if you like, talked to the good guys or the most receptive parts of the cotton industry, and they will find increasing difficulty persuading the bottom 30 per cent or the bottom 20 per cent to join in. What is lacking at the moment is the regulatory underpinning that gives greater credibility to the self-regulation.

In a sense, going back to my regulatory pyramid, here you have an industry which is quite sophisticated, which has a self-interest in cleaning up its act because of all the pressure that was placed upon it, and which is doing a very professional job in cleaning up its act, and yet I suspect it can have only limited success in the absence of government support because the bottom 20 per cent say, ‘Well, you cannot make us do it’, and of course they cannot; they are just an industry association. ‘You cannot make us do it. It is going to cost us money. We do not want to change, so we are not going to change’. The only thing that will make the difference there is not volunteerism, it is not education, it is not even incentives, it is that — —

Mr McQuilten — The Moses factor.

Prof. Gunningham — That is right, it is Moses. You come down with the Ten Commandments and you beat a few heads, and once you beat a few heads, everything changes. So I guess that would be a similar message applied to agricultural chemicals.

Mr Ingram — You would argue fairly strongly that the only reason that worked was because there was a financial penalty being imposed?

Prof. Gunningham — Exactly.

Mr Ingram — And there was a PR penalty that was being imposed on the entire industry, and that is what has forced the industry to take that action in its own time?

Prof. Gunningham — I agree with you, and I am not for a moment suggesting that self-regulation across the board is the answer; it is not. But in some circumstances, such as the ones we both just identified, it can
play a valuable role. So I think in those circumstances we need to applaud the industry association for doing what is in the enlightened self-interest of the industry and for working with that.

Mr INGRAM — If you take it back to the more general operations, that has taken the place of the education regimes that were put in place in other types of operations, like ROPS has taken the place of the government education of farmers and the federation education regime?

Prof. GUNNINGHAM — That is right. So it is an important part of the picture but it is not the total solution, and we need Moses. We still need the underpinning of regulation. I am done.

Mr CRUTCHFIELD — Can I clarify your original comments? I asked about ATVs, and I have just read your section in here. I assume you were alluding to this in terms of technology, as this is two years old now?

Prof. GUNNINGHAM — Yes, it is, and I have not kept up in that two years. That is why I am reluctant to respond to your question.

Mr CRUTCHFIELD — Because here you talk about a British initiative to design a ROPS for ATVs.

Prof. GUNNINGHAM — Yes, and I have not been able to trace any subsequent development in that initiative. It was a personal communication at the time, and we write the report as the evidence is at that time. I am not aware of it having been pursued subsequently, so I am not sure.

Mr CRUTCHFIELD — But here you are suggesting we follow that initiative?

Prof. GUNNINGHAM — That information is now probably outdated. It was certainly a good idea two years ago, but I have not been able to find out any way in which the British have actually pursued that in the interim period, and so I cannot place any weight on that now.

The CHAIR — Thank you very much. You will receive a copy of the transcript in about a fortnight, and any obvious errors of fact or grammar may be corrected but not matters of substance. Thank you very much for your time; it has been very valuable.

Prof. GUNNINGHAM — Thank you.

Witness withdrew.