

South East Fibre Exports Pty Ltd
New South Wales

Draft model WHS Codes of Practice and guidance - Public Comment Response Form

<p>South East Fibre Exports Pty Ltd (SEFE) supports the submission made by the Victorian Association of Forest Industries and the Victorian Forest Contractors Association.</p>	
<p>SEFE makes the following submission to</p>	
<p>1. Managing Risks in Forestry Operations</p>	
<p>Section/page no.</p>	<p>Recommendation: That work health and safety legislation and the <i>Managing Risks in Forestry Operations Code</i> be amended to address the current flaws in the legislation that have been documented below. The revised legislation MUST ensure trespassers have a duty of care to others in the workplace and be subject to the same penalties for breaches of the relevant Act and Regulations as those legally entitled to be in the workplace.</p>
<p>Section 5.6 Page 26</p>	<p>5.6 Unauthorised entry to coupe/harvesting sites</p> <p>The guidance material provided in relation to unauthorised entry to forest worksites highlights a deficiency in the harmonised Work Health and Safety Legislation.</p> <p>Under OH&S legislation, authorities in NSW and Victoria interpreted the legislation in a way that excluded unauthorised visitors/trespassers to a worksite from the provisions of the OH&S legislation. (See WorkCover responses to Cyneve 081110, Kasun Logging 280311 and Wilton 300311.</p> <p>Despite this deficiency being pointed out to these authorities, the Work Health & Safety Act 2011 (WHS Act), which came into force in NSW on 1 January 2012, still excludes trespassers from the provisions of the Act.</p> <p>This position was confirmed by WorkCover representatives at a meeting at Batemans Bay on 26 July 2012.</p> <p>The only exception would be, if it could be proved, that any of the trespassers involved in the unauthorised entry were employed by a PCBU.</p> <p>It is nice to say, <i>“In preparation for an invasion occurring, contractors should be made aware of the requirements to:”</i> etc</p> <p>The reality is that increasingly, there is often little or no warning of trespassers entering the workplace.</p> <p style="background-color: black; color: black;">[REDACTED]</p> <p>The operator involved in the above incident had 3 protestors with 2 tree lengths of his machine for up to 3 minutes before he saw them. Approaching from the rear of the machine in camouflage clothing is totally irresponsible. This is just one example as to why these people must be accountable under work health and safety legislation.</p> <p>As workplace health and safety authorities continue to deliberately exclude activist trespassers from coverage of work health and safety legislation and rely on other legislation, there is not a significant deterrent to repeat offenders.</p>

For example one of the occupants of a tripod shown in the following link was **fined \$1,000** under criminal law, after occupying the tripod for 13 hours.

As the tripod occupant was 6 metres above ground level, was perched between 3 thin, crossed poles and had no fall restraint, it could be reasonably argued that *“the person is reckless as to the risk to an individual of death or serious injury or illness.”* Under Section 31 of the NSW WHSA, this individual could be liable to a **maximum penalty of \$300,000 and/or 5 years imprisonment.**

The 2 individuals featured in the following link each received **fines of \$500.** Again, it could be reasonably argued that *“the person is reckless as to the risk to an individual of death or serious injury or illness,”* and liable to a **maximum penalty of \$300,000 and/or 5 years imprisonment.**

The tree-sit occupant in the following link, at one point tries to release a secondary line holding the tree-sit approximately 30 metres above ground level. All charges laid by police have been dismissed. Again, it could be reasonably argued that *“the person is reckless as to the risk to an individual of death or serious injury or illness,”* and liable to a **maximum penalty of \$300,000 and/or 5 years imprisonment.** Three years ago, this 25 year old female activist was arrested at a forest protest in Tasmania.

Two of the individuals in the attached link were fined \$250 and 2 others fined \$300. As the remainder of the group were not serial offenders, they were not issued with penalty infringement notices. If the 25 individuals involved in this workplace invasion were all subject to Section 33 of the NSW WHSA, they would potentially face a **maximum penalty of \$50,000.**

Another area where WHS legislation is needed to be enforced against trespassers relates to bullying.

“Research by the Productivity Commission found workplace bullying is costing the economy \$6 Billion to \$36 Billion per year, on top of the human costs for victims and their families.”

Chair of the House of Representative’s Education and Employment Committee, Ms. Amanda Rishworth MP stated:

“Bullying has serious consequences for individuals and the wider community. Every Australian has a right to feel safe and respected at work.”

Bullying by trespassing activists takes many forms and some are illustrated below.

The first link shows the classic school yard form of bullying.

It appears that while employers are responsible for taking action against bullying in the workplace, without action from workplace safety authorities, employers have no tools to prevent this form of bullying.

The next interview from ABC radio highlights a much more intimidating form of bullying.

[REDACTED]

It is unlikely that any of the 5 masked trespassers will be charged.

The next links show incidents that occurred in Victoria over 10 years ago. Some government departmental staff who were the victims of this long running bullying campaign are still suffering the after effects and are part of the “human cost” of workplace bullying mentioned above.

[REDACTED]

Legislators must understand that the issues highlighted above are serious workplace health and safety issues and must be incorporated into existing legislation. **It is unconscionable that, on the one hand government expects employers and employees to meet higher OH&S performance level, but in key areas of risk, have to date, failed to legislate and take enforcement action to help employers effectively manage these risks.**

In terms of legislative reform, it should be noted that unsafe acts and bullying by trespassers are no longer confined to the forest industries. Businesses including coal fired power stations, coal transporters, coal ship loaders, furniture and stationery retailers, live sheep exporters and intensive livestock, enterprises, among others, have been targeted by trespassing activists.

It should be noted that footage shown as part of this submission has by no means captured the full extent of the hazardous and bullying behaviour that many trespassers bring to forest workplaces.

An increasing number of examples of dangerous and bullying behaviour are being posted on You Tube at *pedrocam100*. Raw footage is available on request.

[REDACTED]

Impacts: If trespassers who enter a workplace are not effectively deterred, the near misses and serious, but unreported injuries, will continue to occur and one day someone will be killed.