

SAFETY CODES AND THE LAW

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THE LAW

Introduction

Four Acts of Parliament contain provisions relating to safety in the logging industry, or create regulations which do so. Two of these are the responsibility of the Ministry of Transport; they concern particular, specialised aspects of the logging process. The others are the responsibility of the Labour Department.

The Marine Division of the Ministry of Transport administers the Boilers, Lifts and Cranes Act 1950, which provides for the inspection of cranes for safety, while the Road Transport Division enforces the Transport Act 1962 and regulations made under it which relate to the safety of vehicles and loads on public roads.

The Acts administered by the Labour Department have a more general application. The Agricultural Workers Act 1977 contains broad safety provisions and applies to workers engaged in all aspects of bush work and silviculture, among others, but it is the Bush Workers Act 1945 which makes provision specifically "for the safety and protection of bush workers", as its title indicates.

The Bush Workers Act is the prescription for the Labour Department's involvement in logging safety, and its provisions are the basis for the safety codes and guides issued by the Department. It is therefore important for appreciation of the relationship between codes and Act that the key features of the Act are understood.

Application of the Bush Workers Act

The Bush Workers Act applies to employers and workers in any "bush undertaking", which is defined in Section 2(1) as "any tree-felling or logging undertaking, conducted for commercial purposes, in which any person is engaged in felling trees by any means, or logging operations; and, whether or not conducted for commercial purposes,

- (a) Felling trees by any means for the purpose of land clearance;

- (b) Thinning, pruning, and topping operations in connection with silviculture;
- (c) Transportation of logs, flitches, sawn timber, or waste products, otherwise than on a public road or street or Government railway;
- (d) Construction and maintenance of private roads, tramways, or bridges, and the shifting of any plant, for the purpose of any of the foregoing operations".

Safety Provisions of the Act

The safety of bush workers is the chief concern of the Act, and the majority of its provisions relate directly to safety. There are provisions dealing with plant, requiring it to be sound, properly operated and maintained in a safe condition; provisions requiring safe work practices; provisions requiring first aid to be available in the event of an accident, and provisions for the protection of workers, as well as requirements for certain administrative procedures aimed at assisting the Bush Inspector, for example notification of contracts for bush undertakings. These provisions are expressed in general terms - for example, dangerous methods of work are prohibited in section 11A, but what constitutes a dangerous method of work is not defined.

The responsibility for defining what is safe plant and safe practice, and what is not, rests largely on the Bush Inspector. This is clearly established in section 12 of the Act, which gives the Inspector the authority to issue "such directions as he deems necessary to prevent accidents or to ensure compliance with this Act" in respect of any undertaking using plant which does not comply with the Act's requirements, where work is being carried out in a dangerous manner, or where the provision and use of protective clothing or equipment is necessary to prevent accidents or injury. The Bush Inspector is free to use his own judgement as to when such a direction should be issued, as far as the Act is concerned.

THE CODES

Development of the Safety Code for Bush Undertakings

The Bush Workers Act began operating on the basis I have outlined in the late 1940's. After only a few years it became obvious that some definition of the minimum acceptable standards of safety was needed so that employers, workers and Inspectors would have a common point of reference. Rather than resorting to regulations, with their attendant inflexibility, the Department chose to consult with industry and formulate a set of agreed standards.

The result was the publication, in 1960, of the first edition of the "Safety Code for Bush Undertakings". The Bush Code, as it is known, is recognised throughout the industry, and has been revised twice, in 1972 and 1978, to bring it up to date with industry practice and inspectorate experience. It is supplemented by a booklet on bush tractor canopies and a further safety code on timber stacking and transportation, both being areas which it was felt required detailed comment and recommendation.

The Department also publishes a booklet entitled "A Guide to Safety in Crosscutting and Tree Felling"; this is designed for persons who are not part of the logging industry but who may have occasion to do some bush work, for example farmers, service club members or project workers, and is not a substitute for the Bush Code. The Bush Code is the definitive statement of safe practice for the industry.

Principles of Compilation

The purpose of the Bush Code, which I use as my example because of its importance and general relevance, is to express in the clearest and most economical way possible the safety rules to be observed in each of the various operations which occur in bush work, without neglecting the need to explain the principles involved and to illustrate the work methods described. The selection of content, and the form of the Code, are dictated by the need to achieve this aim.

The rules relevant to each aspect of operations are listed under a heading (such as 'rigging'). Because they are minimum standards, they are generally expressed as requirements. There are also some additional suggestions and recommendations, which are identified as such in the text. Explanatory notes precede some of the rules, particularly when it may not be obvious why higher standards are set for certain operators, and technical information is also given where it is likely to be used in day-to-day calculation. In each case the prime criterion for inclusion of material is whether it will enhance safety, but obviously such material also has educative value, particularly the explanatory notes and illustrations of work methods. The Code is used in training under the Logging and Forestry Industry Training Board's certifications scheme; this is a use of the Code which the Department supports, because we believe that training in safe methods is a vital part of training as a whole.

The Role of the Labour Department

The Department has the principal role in initiating, compiling and enforcing the Code, because of the Code's relationship to the Bush Workers Act. In compilation, every effort is made to achieve consensus on all points in consultation with industry,

but the Department must retain the right to make the final decision, if necessary, on a particular point because it has the legal responsibility for setting safety standards which safeguard the worker to the greatest degree practicable.

Enforcement of the Code's provisions is part of the Bush Inspector's normal duties whenever inspecting a bush undertaking. Where safety standards are found to be lower than those laid down in the Code, a section 12 direction notice is served under the Bush Workers Act. In certain cases, the Inspector may require higher standards than those prescribed in the Code to be observed and is not prevented from demanding compliance with his requirements by the existence of the Code, but this will generally be where some aspect of a particular undertaking renders it unusually hazardous.

THE CODE AND THE LAW

Legal Status

The question of the Code's status in law has been raised more than once. At the outset, I should stress that the Code is not, and does not purport to be, a piece of legislation. An employer or worker cannot be prosecuted with reference only to the Code.

However, because of the responsibility placed upon the Bush Inspector to define what constitutes compliance with the Act and what constitutes non-compliance, the rules set out in the Code are used in practice as a supplement to the provisions of the Act, as I described in the previous section.

Whether or not the Code is itself a document with the force of law is not relevant to a charge brought under section 12(8) of the Bush Workers Act, which states that "every person commits an offence against this Act who acts in contravention of or fails to comply with any direction given to him by an Inspector ... under this section", and, as we have seen, it is the Inspector's prerogative to decide the criteria justifying the issue of such a direction. The Code is a list of the criteria which the Inspector uses as the basis for making his judgements; he could equally well operate from standing orders or from his own judgement alone, but the great advantage of the Code over these forms of guidance is that it is published and its criteria known to all parties likely to be affected.

Regulations could have been issued to prescribe the rules of safety, as has been done in other industries, but the Department believes that the Code is preferable to regulations because it can be expressed in plain language, and because it lends itself to consultation and more frequent revision. It is obviously more effective in safety terms if there is voluntary compliance, as safety depends primarily on constant observance of safety rules by employers and workers throughout the industry rather than on enforcement by Inspectors, however vigilant!

THE REVISION PROCESS

The current revision of the Bush Code illustrates the steps of the revision process. It was prompted by the realisation that far-reaching changes were taking place in the industry. A first draft of the part of the Code dealing with logging was prepared after consultation with Bush Inspectors, and was sent to industry for comment. Comments were received, considered, and where appropriate incorporated in a final draft, which has now been sent out for further comment. The process began in 1982 and has not yet been completed because of the length of time taken in the consultative process, but the Department considers this process to be of the highest importance if the Code is accurately to reflect the changes which are occurring, and is to maintain as high a degree of worker safety as is provided for in the present version. No decision is made arbitrarily, or without due consultation.

THE CODE IN THE FUTURE

The Code is being revised at present because of extensive changes in the industry, which have meant that the Code needed considerable expansion, to the extent that it was felt that all the information could no longer reasonably be included in a single booklet as at present. The Code will therefore be published in three parts : Part 1, Cable Logging, Part 2, Transportation, and Part 3, Logging. This has enabled consultation to be carried out separately on each part, and has meant that Part 3 has been able to proceed despite certain technical difficulties that have been encountered with Parts 1 and 2.

It is the Department's hope that all three Parts will gain the wide acceptance that has made the Code such a useful tool in providing for the safety and protection of bush workers in the past.

