

Rural Workers Accommodation Act 1969

National Competition Policy Review

Final Report – February 2004

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1. Background to the review

During 2003, WorkCover undertook a National Competition Policy review of the *Rural Workers Accommodation Act 1969* ('the RWA Act').

The main purpose of the review was to examine whether:

- any restrictions on competition in the RWA Act benefit the community as a whole;
- those benefits outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

A secondary purpose of the review, to be undertaken if it was determined that retaining the RWA Act was justified, was to explore ways of modernising it and bringing it into line with existing WorkCover practice and legislative standards.

2. Participants in review and consultation process

A National Competition Policy Review Issues Paper addressing the RWA Act was the subject of targeted consultation with industry stakeholders during August and September 2003.

A briefing about, and discussion of, the Issues Paper was held at WorkCover's Rural Industry Reference Group meeting held on 14 August 2003. Present at the meeting were representatives of the following organisations:

- Employers First
- NSW Farmers Association
- Nursery Industry Association
- Rice Growers Association
- Southern NSW Farm Safety Action Group

The Issues Paper was also circulated to the following organisations:

- Australian Lot Feeders' Association
- Australian Workers Union
- CGU Workers Compensation
- Cotton Australia Ltd
- Labor Council of NSW
- Newcastle Trades Hall Council
- Nursery & Garden Industry NSW & ACT Limited
- Shearing Contractors Association
- Upper Namoi Cotton Growers Association
- YouthSafe Committee

Written submissions were received from the Australian Workers Union and the Labor Council of NSW.

3. The RWA Act

Historically, rural workers in NSW were rarely provided with accommodation or amenities. When accommodation or amenities were available they were often of a substandard condition. Concern over the poor working conditions endured by shearers and other rural workers led to the introduction of the *Shearers' Accommodation Act 1901* and, subsequently, the *Rural Workers Accommodation Acts 1926*, which formed the basis of the current RWA Act. The legislation was aimed at improving the conditions of rural workers by ensuring that their requirements for accommodation and amenities while at work were adequately met.

The RWA Act requires:

- prescribed accommodation to be provided to rural workers who, because of the terms of their employment, live for more than 24 hours on the premises on which they work; and
- prescribed amenities to be provided to non-resident workers.

Rural workers are defined in section 3 of the RWA Act as persons working in connection with:

- sowing, raising or harvesting any crops or farm produce (whether grown for food or not);
- the management, rearing or grazing of horses, cattle or sheep;
- the shearing or crutching of sheep;
- the scouring, sorting or pressing of wool;
- dairying; or
- any other occupation connected to those kinds of work.

The person responsible for providing the accommodation is the landholder of the premises where the accommodation is to be provided or, where the employer is a landholder of other premises and the worker is engaged in work connected to those other premises, the employer. "Landholders" is defined as including, in relation to rural premises, the owner of the land, a tenant or person otherwise entitled to possession of the premises, and a person authorised to manage or control the premises. It therefore extends to employers as well as owners of land.

3.1 General relationship with OHS legislation

The RWA Act was enacted in response to concerns about unhealthy and unsanitary conditions for workers. The Act contains detailed provisions about the standard of accommodation and amenities to be provided. The broad scheme of the RWA Act deals with the health, safety and welfare of persons at work.

The primary sources of occupational health and safety obligations in NSW are the OHS Act and the OHS Regulation. The OHS Act and Regulation adopt a performance-based approach to occupational health and safety, while maintaining prescribed controls in especially hazardous areas. The legislation emphasizes risk management, and imposes obligations on employers and self-employed persons to identify foreseeable hazards that may arise from the conduct of the employer's

undertaking, to assess the risks of those hazards and to eliminate or control the risks.

The RWA Act is defined as “associated health and safety legislation” for the purposes of the OHS Act. Section 35 (o) of the OHS Act provides that regulations can be made under that Act for any OHS matter with respect to which regulations could be made under the associated occupational health and safety legislation. This means that regulations can be made under that section of the OHS Act instead of under the RWA Act. Section 132 of the OHS Act provides that the OHS Act prevails over anything that is inconsistent in the associated health and safety legislation.

3.2 Intersection between OHS legislation and RWA Act

Amenities

There is overlap between the OHS Regulation and the RWA Act. Clause 18 of the OHS Regulation requires an employer to provide amenities – defined as facilities provided for the welfare or personal hygiene needs of employees, but not specifically including accommodation – appropriate to the requirements of the workplace. Clause 19 requires employers to maintain those amenities, and any accommodation that is provided because of the circumstances of the work, in a safe and healthy condition. Those clauses make the requirements of the RWA Act relating to the provision of amenities to resident and non-resident rural workers obsolete.

Enforcement

The provisions of the RWA Act relating to prosecution for breach of its provisions intersect with provisions of the occupational health and safety legislation. In practice, prosecutions that otherwise might be brought under the RWA Act are now routinely conducted under the OHS Act. The move to a generalist WorkCover Inspectorate and the formation of WorkCover industry-focused teams, in particular the Rural Industry Team, arguably overtakes the need for the specific enforcement provisions of the RWA Act.

While penalties for non-compliance with the requirements of the RWA Act are punishable by a maximum penalty of 5 penalty units (currently \$550), much higher penalties are available under the occupational health and safety legislation. The OHS Act also provides for improvement notices and prohibition notices to be issued for breaches of the legislation.

Industry codes of practice

Part 4 of the OHS Act provides for the making of industry codes of practice. An industry code of practice is intended to provide practical guidance to people with OHS obligations and may be used to determine industry standards. However, it is not certain that there is sufficient connection between accommodation (or the failure to provide it) and the workplace for a code of practice dealing with the provision of accommodation to rural workers to be made under Part 4.

3.3 Objectives and effectiveness of the RWA Act

The RWA Act aims to improve workplace health and safety by addressing circumstances that increase the risks of travel-related accidents and fatigue-related workplace accidents. The provision of adequate amenities and accommodation generally addresses the welfare of people working in rural industries. These aims are consistent with the objectives of the OHS Act. The RWA Act also aims to ensure that accommodation is safe, but this has been made obsolete by clause 19 of the OHS Regulation.

There has been a move toward the use of the marketplace as the most efficient means of achieving certain policy objectives. However, it is recognised that existing markets cannot properly address issues such as occupational health and safety and that there is, therefore, a legitimate role for government intervention to support the achievement of OHS goals and targets.

Although the policy objectives of the RWA Act remain desirable, its requirements are highly prescriptive and inconsistent with the modern performance-based trend in legislation. In addition, the language of the RWA Act is outdated and inconsistent with the use of plain English in other NSW statutes.

4. Scope of impact of RWA Act

4.1 Number of employers affected

The Australian Bureau of Agricultural and Resource Economics (ABARE) has estimated the number of farms, businesses, people and households (split between owner/manager and 'other' households) in the farming sector (ABARE research report 98.6). Based on this data, approximately 1,800 farms (or about 7.5% of all NSW farms) provide accommodation for rural workers (an average 2 workers per farm). Of approximately 80,500 farm employees in NSW, about 3,600 employees receive accommodation.

However, the intersection of the RWA Act and industrial awards (discussed in more detail below) means that fewer than 1,800 employers are impacted by the RWA Act as opposed to other legislation.

4.2 Intersection between RWA Act and State Awards

Requirement to provide accommodation

In the absence of the RWA Act employers would not generally be required to provide accommodation for workers. Some rural awards require employers to provide accommodation or cover workers' accommodation costs, and these requirements would continue to apply in the absence of the RWA Act.

For instance, employers of shearers and crutchers on State awards (who make up approximately 39% - 49% of the shearing workforce (NSW Dept IR)) are still required to meet the costs of accommodation for workers. In many circumstances this will be met most appropriately through the provision of accommodation on work premises. Therefore, the cost impact of accommodation for State award shearers and crutchers cannot be attributed to the RWA Act.

Recovery of costs

Where the RWA Act requires accommodation to be provided, it must be free of charge to the worker, subject to any contrary provision of an award applicable to the worker.

Consideration of the various awards under which rural workers operate (Table 1, NSW Department of Industrial Relations, Commonwealth Department of Employment and Workplace Relations) reveals many provisions allowing employers to recover all or part of the costs of providing accommodation to workers (which will override the contrary RWA Act requirement). In effect, the RWA Act forces employers to bear the full cost of rural worker accommodation only with respect to a small minority of workers who are:

- on a State award that does not allow for cost recovery, and
- required to spend more than 24 hours on work premises.

In all other cases, the employer is able to recover some degree of costs from the employee. The only award that may not allow for cost recovery is the *Cotton Growing Employees (State) Award*¹, which allows for cost recovery for workers' "keep". Whether the meaning of "keep" is confined to meals, or includes the provision of accommodation, is open to interpretation.

4.3 Full Cost Equivalent (FCE) Number of Employees

Given the intersection between the RWA Act and the various industrial awards, the cost of employee accommodation can be attributed to the RWA Act for only a portion of the 3,600 employees for whom accommodation is provided. This portion is difficult to estimate, hence this review uses a range of 750 to 3,600 FCE employees when analysing whether the RWA Act is in the net public benefit.

This translates to between 375 and 1,800 employers who are affected by the RWA Act.

¹ There are between 750 and 940 cotton workers on a State award (ABS 2001, Census of Population and Housing). It is not known how many of these are eligible for accommodation provision under the RWA Act. For the purposes of this review a worst case approach is taken, with 100% of employees assumed to require accommodation

Table 1: Rural Industry Awards and Cost Recovery for the Provision of Accommodation

Award	Accommodation Cost Recovery (relevant excerpts from Awards)
Horticultural Industry (State) Consolidated Award	Where the employer provides the employee and the employee's family with "live-in" accommodation, the employer may make a charge for the use of such premises as agreed to in writing by both parties at the commencement of employment.
Wine Industry Consolidated (State) Award	Employees compelled by their duties to spend the night away from their homes or the property on which they are employed, shall be fully reimbursed for all fares and other expenses incurred during the period they are away from their usual place of abode.
Pastoral Employees (State) Award	<p>Where the employer provides an employee with living premises for the use of a "without keep" employee and his/her household, the employer may make a charge of an amount agreed between them in writing for the use of the premises and/or power supplied to such premises.</p> <p>(a) Where the employees do not reside during a shearing (or crutching) at their home or usual place of residence and the employees are forced to obtain an pay for sleeping quarters away from the employer's premises because the employer is unable to provide sleeping quarters at the premises for the employees, the employer shall:</p> <ol style="list-style-type: none"> i. Arrange for sleeping quarters for the employees to be supplied elsewhere at the employer's expense; or ii. Pay to each employee an allowance per night as set out in Item 2 of Table 2 – Other Rates and Allowances, of Part B, Monetary Rates, for each night during the employee's employment that the employee is so forced to obtain and pay for sleeping quarters; and, where the distance is 800 metres or more walking distance between the employee's sleeping quarters and the shed, provide or pay for the transport of the employee between the sleeping quarters and the shed; and, where the time taken in journeying by the most direct route between the sleeping quarters and the shed exceeds in the total for one day, one hour, pay the employee an allowance for travelling time for such excess time at the rate as set out in Item 3 of the said Table 2. <p>(b) Where an employee resides during a shearing (or crutching) at his/her home or usual place of residence and travels daily to the shed, the following provisions shall apply, subject to subclause (c) of this clause:</p> <ol style="list-style-type: none"> i. Travelling Allowance – Shearers or Crutchers Only – Where the distance between the shed and the employee's place of abode exceeds 65 km by the most direct practicable route the employer shall pay to the employee a travelling allowance pre day as set out in Item 4 of the said Table 2 for each day upon which the employee so travels <p>(c) Subclause (b) of this clause shall not apply in any case where the employer offers the employee suitable accommodation at</p>

	<p>the shed and the employee chooses not to use it. For the purpose of this subclause, suitable accommodation shall mean accommodation which conforms with the requirements of the Rural Workers' Accommodation Act 1969.</p>
<p>Cotton Growing Employees (State) Award</p>	<p>1) See Rural Workers' Accommodation Act. 2) Where keep is provided: a. Such keep shall be of good quality and of sufficient quantity..... b. The amount to be charged for keep shall be agreed to by the employer and the employee. The employer may deduct from the wages due to the employee the charges referred to in this subclause. c. The employer shall provide at least three meals a day.</p>
<p>Dairying Industry Employees (State) Award</p>	<p>Where at an employee's request an employer provides accommodation and/or keep to an employee: (a) The employer and employee shall agree as to the cost, specified in money terms, to be charged to the employee for such accommodation or keep but shall not exceed an amount equal to one-fifth of the full-time wage prescribed by this award for the classification of the employee.</p>
<p>Strappers and Stable Hands (State) Award</p>	<p>Where board and lodging are provided for permanent employees on or adjacent to the employer's property, such board and lodging shall be of a reasonable standard and the employer may deduct from the employee's earnings an amount as set out in Item 4 of Table 2 – Other Rates and Allowances, of Part B, Monetary Rates, for full board and lodging (where a cook is supplied by the employer) and an amount as set out in Item 5 for full board and lodging (where no cook is supplied by the employer).</p>
<p>Pastoral Industry Award 1998 A Federal award covering employees employed in connection with the management, rearing or grazing of sheep, cattle, horses or other livestock, the sowing, raising or harvesting of crops, the preparation and treatment of land for any of these purposes, and the shearing or crutching of sheep.</p>	<p>Where the employer provides an employee with living premises for the use of a "without keep" employee and the employee's household the employer may make a charge of an amount agreed between them in writing for the use of the premises and/or power supplied to such premises.</p>

5. Effects of the RWA Act on competition and related economic issues

5.1 Effects on competition

In the NCP Issues Paper, WorkCover identified a number of ways in which the requirements of the RWA Act may affect competition. In theory, the effects are:

- To internalise the costs of poor occupational health and safety (OHS) to rural producers (problem of externality).
- To increase the cost of production of agricultural staples.
- To crowd out (potentially better) private provision of accommodation.

These are considered in more detail below.

Dealing with externalities (a theoretical rationale for government intervention)

Internalising the costs of OHS is not strictly speaking a competitive effect but denotes that an externality exists that may require government intervention. An externality is a situation where the effect of one party's activities on another party is not taken into account by the price system (see Box 1).

Box 1: An example of an externality

A classic example of an externality is where a manufacturing plant's waste emissions are released into a river, with a consequent detrimental impact on a fishing company downstream of the plant. The "cost" of polluted fishing stocks is not borne by the manufacturer, hence the manufacturer does not have an incentive to reduce the amount of pollution released by the plant (say through improved filtration systems). Another way of saying this is that the private costs of production (ie. the manufacturer's costs) are lower than the social costs of production (ie. both the manufacturer's and the fishing company's costs). Therefore, the manufacturer will produce at a socially non-optimal level.

If the manufacturer is forced to bear the fishing "costs" in some fashion (ie. to internalise the costs), then they have an incentive to reduce the level of wastes emitted. This leads to a more efficient use of resources across all industries in the community. Internalising costs can be achieved in a number of ways such as through the imposition of pollution taxes, development of property rights, etc.).

All employers, not just farmers, face private costs of production that are lower than social costs due to the fact that they do not bear the full costs of injured workers – which are borne predominantly by the injured worker, their families (particularly where a long term disability or fatality occurs), the health system and the welfare system.

That this externality problem is significant is indicated by data on the risk of workplace injuries. The agricultural industry is a far riskier industry than the average to work in (Table 3).

Table 3: Risk of Accident by Industry

	Injuries per 100,000 workers	
	All Industries	Agriculture and Services to Agriculture
Workplace fatalities	5.2	17.2
Workplace injuries	15.1	29
Non-workplace injuries	1.7	1.1

Ample evidence is available demonstrating the negative impact of fatigue on worker performance, safety on roads, general health and social/community interaction. Further evidence is available demonstrating that the more time spent in travel, the higher the risk of an accident. The RWA Act acts to mitigate worker fatigue and reduces the amount of travel time spent by workers (who also would otherwise be travelling in a fatigued condition). The extent to which the workplace accident rate would increase in the absence of the RWA Act is not known with certainty.

The effect of the RWA Act is to internalise (for specific rural employers) some of the costs associated with poor OHS – which will reduce their output to a more (societally) optimal level. The RWA Act targets those employers who have an additional requirement for workers to spend more than 24 hours on work premises, thereby avoiding unnecessarily increasing other producers' costs and instituting a form of cross subsidy.

Negative externalities are normally dealt with through the:

- imposition of a tax or charge on the activity so financial costs are better aligned with economic costs;
- creation of tradeable but limited rights to engage in the harmful activity; and
- imposition and enforcement of minimum standards to minimise externalities.

Given the nature of the externality (human deaths and injuries), the use of tradeable rights is not considered appropriate. Hence, the RWA Act imposes minimum standards concerning a specific aspect of OHS, thus imposing a “charge” on the activity of specific employers so that their financial costs are more closely aligned with economic costs to society.

Increased cost of production

When the cost of an input factor of production (eg. labour) increases, substitution and output effects act to reduce the demand for that factor (in this case labour) (Table 2).

The substitution effect means that producers look to replace (or substitute) labour with (less expensive) machinery. The output effect means that as the prices of agricultural products go up, consumer will purchase less (ie. demand decreases). This, in turn, means that producers will reduce the amount they produce (ie. supply decreases to match). When producers reduce production levels, they need fewer workers and so demand for labour will also reduce.

Table 2: Substitution and Output Effects

Substitution Effect	Output Effect
The size of the substitution effect is determined by how easily labour can be substituted. In the short run this is negligible but in the long run substitution will occur (eg. sugar industry replaced labour for cane harvesting labour with mechanical harvesters).	The size of the output is determined by the size of increase in marginal costs and the elasticity of demand for the output. The price elasticity of demand for agricultural staples is low, which means that there is scope for prices to consumers to rise significantly with only a (relatively) small reduction in consumer demand for those products.

The size of the effects depends on how easy it is for labour to be substituted and by how much consumer prices go up. Consumer demand does not decrease very much in response to increases in price (agricultural staples tend to have a low price elasticity of demand as people have to eat). This means that the demand for labour will not reduce very much as most of the increased costs of production will be borne by the consumer. However, as noted elsewhere, the additional cost of production due to the RWA Act is estimated to be very small so the impact on individual consumers is likely to be negligible.

However, in some cases producers are not able to pass on their higher costs (they are 'price takers'). This situation arises where the produce is predominantly sold on the international market and also is likely to apply to the minority of producers impacted by the RWA Act who produce only for sale on the domestic market. The extent to which producers are able to pass on their increased costs is not known.

The current situation exemplifies the long run situation, as the RWA Act has been in place since 1924. That is, the mix of production inputs has had time to stabilise and maximal substitution of labour will have occurred – with further changes arising in response to ongoing technological advances.

With the ongoing growth in population and employment in rural/regional areas of Australia (Australian Farm Surveys Report 2000, ABARE), bringing with it growth in appropriate accommodation for workers and their families, the impact of the RWA Act will continue to decrease.

Crowding out private initiatives

It might be argued that the provision of accommodation by employers crowds out other private sector accommodation. However, the lack of suitable accommodation in rural areas is well documented and indicates that crowding out is not an issue.

If any crowding out does occur, it is likely to be marginal for the following reasons:

- Accommodation is provided where the worker needs to spend 24 hours on the premises. This situation arises in farms distant from other accommodation. By

definition, if accommodation were available nearby, there would not be a need for the worker to spend 24 hours on the premises.

- In many cases the workers wages are low (84% of farm employees have an annual income <\$31,200 and 35% earn <\$15,500 per annum (McAllister 2002)). Demand for hotel-type accommodation by this group of workers is likely to be low.
- Many rural workers are seasonal and it is unlikely that a private market will develop that can afford to let capital remain idle for most of the year. In Victorian fruit picking areas, employers still provide the majority of accommodation (caravan parks, etc.) even though not required by legislation to do so.

Summary

The RWA Act does not act to restrict competition in the agricultural industry or by crowding-out investment in the accommodation industry. In fact, it acts to improve the efficiency of resource use by internalising the cost of poor OHS to a specific sub-set of rural employers who require employees to spend more than 24 hours on work premises.

5.2 Other distortions of the competitive market

The impact of tariffs (Australian and foreign), industry assistance schemes, compulsory marketing arrangements and single desk systems swamp any competitive impact of the RWA Act. For example, the Productivity Commission has found that nearly \$6.8 billion of tariff assistance on outputs for the manufacturing sector has raised the price of manufacturing inputs to the detriment of the agricultural sector – which has led to increased prices of agricultural products (Trade and Assistance Review 2002-03).

5.3 Approaches in other jurisdictions

Other Australian jurisdictions deal with the accommodation of rural workers in a variety of ways. The different approaches vary depending upon historical, geographical and economic factors particular to each jurisdiction.

On the basis of the Accessibility/Remoteness Index of Australia (ARIA), Victoria, Tasmania and, especially, the ACT demonstrate a significantly lower level of remoteness as compared to NSW, Qld and WA. The Commonwealth Government's Accessibility/Remoteness Index of Australia (ARIA), developed by the National Centre for Social Applications of Geographic Information Systems, uses distances to population centres as the basis for quantifying accessibility to various services, hence remoteness. The remoteness structure in the index is also used for the production of standard ABS statistical outputs from surveys.

The remoteness index demonstrates that the majority of farms in Victoria, Tasmania and the ACT are located within close proximity to population centres that provide

suitable levels of health, housing and other services. Therefore, the need for workers to remain on properties for more than 24 hours due to remoteness from suitable accommodation differs markedly to the situation in NSW. While South Australia has a similar remoteness index to NSW, Qld and WA, it has a much lower population density in rural and remote regions as compared to NSW (ABS 1996 Population Census).

Both Queensland and Western Australia retain specific statutes relating to accommodation for pastoral workers and shearers. Queensland's *Pastoral Workers Accommodation Act 1980* was reviewed in 2000 in light of the fact that regulations under the Act were due for automatic repeal. NCP issues were not considered in the review. The report on the review recommended retaining the basic requirements of the Act, and amendments updating the Act were made in 2003.

The *Shearers' Accommodation Act 1912* of Western Australia has not been amended since 1997. Western Australian *Construction Camp Regulations* (made under the *Health Act 1911* of WA) set out requirements for temporary accommodation to be provided for groups of more than 25 persons for construction projects and any other work requiring a temporary resident workforce.

Victoria's *Shearers Accommodation Act 1976* was repealed in 1985, well before the advent of the National Competition Policy agreements. The explanatory material supporting the repeal stated that the requirements of the Act were "superseded by a combination of other legislative initiatives which include Federal Awards, the Building Code of Australia, the Victorian Occupational Health and Safety Act and the Victorian Industrial Relations Act". (Victoria's industrial relations framework was deregulated in 1992 and the State's industrial relations powers referred to the Commonwealth in 1996 under the Kennett Government.)

The ACT repealed its *Rural Workers Accommodation Act 1962* in 1996. That Act formed part of a housing scheme available to a wide range of workers in the ACT that was aimed at attracting workers to the Territory. The general scheme was not backed up by legislation and is no longer in operation, although it has not been formally revoked. Much of the housing infrastructure that had been provided to workers in the ACT was destroyed in the January 2003 bushfires.

The *Occupational Health, Safety and Welfare Act 1986* of South Australia and the *Workplace Health and Safety Act 1995* of Tasmania both require employers to maintain any accommodation or facilities under their control in a safe and healthy condition. In addition, the WorkCover Corporation of South Australia has published *Guidelines for Workplace Amenities and Accommodation*, which contain practical guidance for the provision of amenities and accommodation when they are provided.

6. Cost Benefit Analysis of RWA Act

The approach taken in this review is for a cost benefit analysis (CBA) rather than the development of a fully specified economic model, which is not warranted given the limited scope of impact of the RWA Act. The analysis compares the costs and benefits of retaining the RWA Act as it currently stands with the base case scenario of no legislation concerning rural workers accommodation.

6.1 Costs

Employer compliance costs

There is little data to indicate the actual cost of providing worker accommodation. Two approaches have been taken in this review. Firstly, simple modelling of the cost of constructing accommodation, indicates that the cost of providing accommodation (per farm) is in the vicinity of \$1,000 to \$7,000 per year². It is not known to what degree allowable accommodation charges reduce this cost to the employer.

Secondly, available data (ABARE Australian Wool Industry 2003 and Australian Farm Surveys Report 2003; ABS data on farm business finances 1999-2000) indicate that accommodation accounts for about \$2,000 per annum in NSW. This is equivalent to about 1% of total (pre-tax) operating costs of an average NSW farm.

Both approaches indicate that the cost of accommodation provision is relatively small.

Discounting at 8% over a 40 year period, the cost of the RWA Act to NSW farms³ is estimated to range between \$250,000 and \$1.2 million per annum.

Government enforcement costs

The cost of government enforcement efforts is marginal, as compliance with the RWA Act can be assessed as part of existing regular inspection activities. Other

² The RWA Act requires accommodation of three varying standards to be provided to rural workers of different types. The accommodation ranges from what is effectively a permanent house-like structure for large groups (greater than 5 persons) of rural workers that are (essentially) permanently located on employers' premises to temporary tent or caravan-like structures for temporary workers who need to spend more than 24 hours on employers' premises. The provision of various amenities such as cooking, bathing, laundering facilities are also prescribed in association with the various ranges of accommodation prescribed. There is flexibility for the employer to seek approval of accommodation and amenities outside of those prescribed where the prescribed forms are not considered feasible.

Given an average of 2 workers per farm, it is likely that construction costs are significantly less than the upper estimate of \$200,000 used in the modelling [Assumes: \$40,000 – \$200,000 construction cost @ ~\$800/m², \$1,000 – \$5,000 maintenance cost per year, discounted over 40 years in line with Australian Tax Office guide, 0% depreciation].

³ Earlier it was estimated that the number of employers impacted by the RWA Act ranged between 375 and 1,800.

costs of administering and managing the legislation and regulation is undertaken within existing resources of government agencies.

Consumer costs

The impact on the individual consumer budget is likely to be marginal⁴ as the ability of the small group of producers to raise prices is limited and agricultural products affected by the RWA Act only make up a minor proportion of a consumer's total consumption of goods and services.

6.2 Benefits

Employer benefits

To a certain extent less fatigued workers will be more productive, which will defray the costs of accommodation. It is not possible to determine whether and to what extent productivity improvements occur and this has not been taken into account in the cost benefit analysis.

Other benefits to the employer arise from costs avoided concerning employing new workers, training, etc. Again, the extent of these cost savings are not known with any certainty and will vary depending on whether the employee is a contract, casual, or permanent employee. They have not been included in the cost benefit analysis.

Occupational health and safety benefits

Table 4 indicates the number of OHS incidents estimated to occur to rural workers.

Table 4: OHS Incidents Amongst Farm Workers

	Incidents per '000 Agricultural Workers	No. Incidents per Year	Cost per Year (direct and indirect costs)
Workplace fatalities	17.2 per 100,000	14 deaths	\$45.3 million
Workplace injuries	29 per 1,000	2,337 injuries	\$18.6 million
Non-workplace injuries	1.1 per 1,000	137 injuries	\$1.2 million
Total			\$64.1 million

Note:

- Valuation of the costs of morbidity and mortality uses the methodology developed by the NSW Department of Health (see: Injury Costs: A Valuation of the Burden of Injury in New South Wales 1998-99; Forbes and Aisbett 2003).
- Direct and indirect costs of injuries and fatalities are included in the analysis.
- A 40 year period is utilised in the analysis, corresponding with the expected remaining life expectancy of the average injured worker.

⁴ Even assuming a worst case scenario where the full 1% increase in costs (proportion of total producer cost due to accommodation) of 7.5% of producers is transferred to consumers, then one might expect an average 0.075% increase in the price of agricultural products.

6.3 Net Public Benefit

The underlying presumption of National Competition Policy is that competitive markets bring benefits, particularly for consumers and businesses. Restoring and enhancing incentives to compete leads to greater efficiency in resource use, lower prices and costs, higher real incomes and fairer outcomes. However, National Competition Policy recognises that there can be exceptions to this general presumption and that restrictions on competition are justified in some circumstances. As a means of determining whether particular restrictions are justified, and whether their benefits outweigh their costs, they are assessed against a number of criteria, including public interest considerations.

The factors used to determine what is in the public interest includes (clause 1(3) of the NCP Agreements (1995)):

- laws and policies relating to ecologically sustainable development;
- social welfare and equity, including community service obligations;
- laws and policies relating to matters such as occupational health and safety, industrial relations, access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

Occupational health and safety legislation is intended to secure and promote the health, safety and welfare of people at work. All levels of Australian government are committed to improving occupational health and safety and reducing the incidence of workplace deaths and injuries (see, for instance, the *National OHS Strategy 2002-2012*, which has been endorsed by Ministerial representatives of each State and Territory and the Commonwealth).

The RWA Act addresses the particular occupational health and safety needs of rural workers. Therefore, the RWA Act needs to be weighed against OHS, equity and consistency of treatment public interest criteria.

Further, stakeholder consultation demonstrated overwhelming support for the OHS objectives of the RWA Act. Evidence of the need for improved OHS performance in the agricultural sector is provided by data on the risk of death and injury in the agricultural sector as compared to the average of other industries.

As noted previously, the RWA Act itself does not restrict competition in the agricultural sector and does little to impact on the prices paid by consumers or the costs incurred by producers. In fact, the RWA Act, in the process of addressing OHS concerns, also addresses a negative externality that the market is unable to correct itself.

Whether the benefits of the RWA Act outweigh its costs is not simple to determine. As with any safety or health improvement, the benefits are never “seen”, as they are

in the form of deaths and injuries averted. However, all stakeholders are acutely aware of the costs imposed.

Nevertheless, a judgement concerning the worth of the RWA Act can be made by considering the economic break-even point from the perspective of an individual farm. The average cost of accommodation is about \$2,000 per annum while the average cost of an injury is about \$8,500. Therefore, just one injury avoided will “pay for” about 4.25 years worth of accommodation. Similarly, just one death avoided will “pay for” over 1,600 years worth of accommodation.

On a NSW-wide basis, a reduction in the injury rate by 1 per 1,000 workers will save about \$1.4 million per annum or “pay for” up to 5.5 years of accommodation NSW-wide. And just one death avoided will “pay for” up to 12 years of accommodation NSW-wide.

The analysis demonstrates that relatively minor financial expenditure can result in overwhelming benefits to society. Further, taking into account the value of consistency and equity of treatment of all workers, the RWA Act is considered to be unambiguously in the net public benefit.

6.4 Other benefits of RWA Act to employers, workers and the community

WorkCover’s NCP Issues Paper identified a range of potential benefits of the RWA Act to rural workers, employers and the community. These included:

- A reduced risk of road accidents travelling to and from work and fatigue-related accidents at work, leading to:
 - occupational health and safety benefits to workers, and
 - decreased workers compensation premiums for employers and a reduced cost of return-to-work and associated workers compensation programs.
- Ensuring workers’ basic needs for rest and recuperation are met without cost to the worker.
- Increasing the operational efficiency of rural business by ensuring the availability and longer-term retention of suitable workers.

The comments and submissions received from stakeholders during the review and consultation process tended to confirm these identified benefits.

Summary

Analysis of the RWA Act shows that qualitative and quantitative benefits outweigh the costs of the legislation – providing a net public benefit.

7. Options Identified in the Issues Paper

The National Competition Policy agreements require that regulation must not restrict competition unless there is a net benefit to the community in so doing and restricting competition is the only means by which that benefit can be achieved. The effect of the RWA Act is shown to be not anti-competitive.

Therefore, in line with the COAG Principles and Guidelines⁵, alternative options to the RWA Act as it now stands should aim to achieve the stated objectives with the minimum regulation necessary.

The following options were discussed in the Issues Paper presented to stakeholders:

- Option 1 – retain the RWA Act in its existing form;
- Option 2 – make a code of practice (CoP) under an amended RWA Act;
- Option 3 – repeal the RWA Act and amend the OHS Act to require the provision of accommodation in certain circumstances;
- Option 4 – repeal the RWA Act without amending the OHS Act and make a CoP with limited scope;
- Option 5 – repeal the RWA Act and provide for accommodation in industrial relations legislation;
- Option 6 – repeal the RWA Act and provide no alternative legislative framework. Option 6 is the base case scenario against which Option 1 (retain the RWA Act in its existing form) was compared in the cost benefit analysis presented earlier.

Options 1 and 6 were analysed in the cost benefit section earlier where it was demonstrated that Option 1 is preferred to Option 6.

Options 2-5 are analysed below against the COAG Principles and Guidelines to determine which is the preferred way of achieving the objectives of the RWA Act. Due to the scarcity of, and difficulty in obtaining, relevant data analysis is undertaken on a 'first principles' basis.

⁵ *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*, issued by COAG in April 1995 and revised in November 1997. They state that there should be an initial presumption against new or increased regulation and a general view that any new regulation should be the minimum necessary to achieve the stated objectives. Where regulation is adopted, there should be a presumption in favour of using performance-based regulation – that is, regulation that specifies desired outcomes, rather than specific compliance strategies, - wherever possible. This is because performance based regulation minimises regulation's likely negative economic impacts by allowing for innovation in means of compliance, including the opportunity to adopt new technologies or processes. The Principles and Guidelines specifically caution against the adoption of standards (such as Australian Standards) "by reference" in regulation.

Option 2 Make a Code of Practice (CoP) under an amended RWA Act

Under this option, the RWA Act would be retained, in a significantly amended and updated form. The Act would be less prescriptive. The provisions of the RWA Act relating to the provision of amenities to workers that have become obsolete due to the overriding provisions of the OHS legislation would be repealed.

The requirement to provide accommodation under the RWA Act would be retained and the power to make a CoP would be inserted. A number of provisions, including the specific detailed requirements for accommodation and WorkCover approvals, would be repealed.

Accommodation would not be required to be provided where any risks arising from the need to travel between the rural workplace and the nearest available accommodation were eliminated or controlled in some other way. The CoP would set out flexible requirements for eliminating and controlling risks and the provision of accommodation where it was required.

In 2001-02 a draft CoP entitled *Accommodation and Amenities for Rural Agricultural Work* was prepared and has been subject to public consultation. Under this option, further industry consultation would be undertaken with a view to commencing the Code and the amended Act at the same time.

Costs and Benefits of this Option

This option maintains the benefits of the RWA Act. Increased flexibility in how the objectives of the Act are to be achieved is in line with COAG principles that act to reduce the costs of compliance. Similarly, the provision of a CoP increases the amount of information available to stakeholders (including the enforcement agency) concerning the way in which accommodation can be provided, reduces information search costs and decreases stakeholder uncertainty concerning how to meet the objectives of the RWA Act. Together, these factors act to reduce the cost of compliance and enforcement.

Therefore, Option 2 is preferred to Option 1 (retaining the RWA Act as it currently stands).

Option 3 Repeal the RWA Act and amend the OHS Act to require the provision of accommodation in certain circumstances

This option would involve repealing the RWA Act and amending the OHS Act to insert a requirement to provide accommodation, arising when specific risk factors exist (such as distance or travelling time).

This option broadens the scope of the OHS Act to include specific requirements for particular industries, which is inconsistent with the current policy principle that OHS Act provisions should have universal application. The requirement may be difficult to restrict to rural circumstances and may in future need to be extended to non-rural

employers. Should that be the case, further analysis to determine the effect on competition would be required.

Currently, the RWA Act requires accommodation to be provided free of charge unless the worker's award provides otherwise. Section 22 of the OHS Act, which provides that employers are not to charge employees for anything provided pursuant to that Act, does not make an exception for contrary award provisions. If the duty to provide accommodation arose under the OHS Act, section 22, as it stands, would prohibit employers recovering any of the costs.

Costs and benefits of this option

The occupational health and safety benefits of the RWA Act discussed in item 4 above are retained under this option. However, it is clear that there is scope for increased costs arising from broadening of the scope of employers affected by the regulation. A potential perverse outcome (that would need to be dealt with through prescriptive regulation) could include the requirement for Sydney CBD employers to provide accommodation for workers based in Wollongong or Newcastle.

On this basis, Option 2 is preferred to Option 3.

Option 4 Repeal the RWA Act without amending OHS Act and make Code with limited scope

This option is a slight variation of Option 6 (the base case scenario). If this option were adopted, an argument would always be available that a general duty to provide accommodation does not arise under the OHS Act, as the connection with a place of work is essential for OHS duties to apply. Risks arising during travel may not be risks arising at a place of work. Compliance with a Code of Practice made in this way would, therefore, be largely voluntary.

Costs and benefits of this option

The benefits of this option are likely to be similar to the base case scenario (Option 6). That is, it is likely to be detrimental to the occupational health and safety of workers.

The Code of Practice will provide information and guidance to those employers who provide accommodation whether or not they are required to by statute. However, as there are employer costs associated with compliance and no costs associated with non-compliance, the impact of the CoP in terms of the additional number of employers providing accommodation (over and above the base case scenario) is likely to be negligible.

The costs of this option are similar to the base case scenario (Option 6). However, there is potential for increased transaction costs (including legal costs) associated with determining whether a general duty of care to provide accommodation existed in cases where fatalities and injuries occurred.

Option 4 is considered to provide fewer benefits at a (potentially) higher cost than Option 2.

Option 5 Repeal the RWA Act and provide for accommodation in industrial relations legislation

Industrial awards regulate aspects of the relationship between employers and employees. The RWA Act currently imposes some obligations on landholders, who may not be parties to the employment relationship. This option would remove the obligation on landholders where they do not directly employ workers.

It should be noted that the provision of accommodation is not an allowable matter under Federal awards. The majority of shearers, who are major stakeholders, are employed under Federal awards. There is currently no clear power under the *Industrial Relations Act 1996* to make an instrument in the nature of the Code.

This option would also require breaches of the requirements to be dealt with by the Industrial Relations Commission. Whether or not this is an appropriate forum would need to be considered.

Costs and benefits of this option

It is difficult to assess the costs and benefits of this option at this stage. However, it is clear that the transactional costs are likely to be higher than under Option 1 or Option 2 as the content and operation of the requirement to provide accommodation would need to be negotiated on either an individual or an industry-wide basis. Furthermore, the scope for inequitable outcomes (depending on the respective bargaining power of different employer/employee groups) is heightened.

In the absence of the RWA Act, the OHS objective of ensuring safe working conditions would continue to be met only in circumstances in which accommodation continued to be provided.

Given the level of uncertainty surrounding this option, it is not preferred.

Summary

Analysis of the range of alternative options indicates that Option 2 (significantly amending the existing RWA Act and developing a Code of Practice) provides the greatest net public benefit.

8. Conclusion and Recommendation

The RWA Act aims to improve workplace health and safety by addressing circumstances that increase the risks of travel-related accidents and fatigue-related workplace accidents. While the National Competition Policy presumes that competitive markets bring benefits, it also recognises that there can be exceptions and that restrictions on competition are justified in circumstances where it is in the public interest – including laws and policies relating to matters such as OHS, industrial relations, access and equity.

In the first instance, the review has determined that the RWA Act impacts on a surprisingly small number of employers – likely to be in the vicinity of 300 to 400 employers – due to the interaction of the RWA Act with industrial awards. Therefore, any impact of the RWA Act will be commensurately small.

Secondly, the review has determined that the RWA Act does not impose restrictions on competition in the form of:

- barriers to entry into or exit from the rural/agricultural industry;
- controls on production or prices of outputs;
- quality restrictions on outputs;
- advertising restrictions;
- type of inputs; or
- discriminating advantages.

Though the review notes the potential for the RWA Act to increase the cost of production of agricultural staples and to crowd-out investment by the accommodation industry, in both cases the potential impact is considered to be marginal.

With respect to the crowding out of privately provided accommodation, the well documented lack of suitable accommodation in rural and remote areas supports the argument that it is unlikely that any significant capital investment will be undertaken for a low wage and predominantly seasonal workforce.

The experience in Victoria is illustrative, demonstrating that employers continue to bear the cost of providing accommodation for rural workers even though not required by legislation. This is in spite of the fact that Victoria has a significantly lower level of remoteness than NSW, with a commensurately higher degree of access to population centres with appropriate health, housing and other services.

With respect to increased production costs, the RWA Act potentially impacts only a very small number of employers (possibly as low as 1.5% of the agricultural industry) and the cost to those affected is less than 1% of their total operating costs. Given that Victorian farmers continue to incur worker accommodation costs, it is arguable whether these costs could be avoided in the absence of the RWA Act in any case.

Nevertheless, the combination of low costs, small number of employers affected and the limited ability of this minority of producers to pass on costs to consumers implies that it is unlikely that the consumer price of agricultural staples will be affected significantly.

The review also notes the presence of a negative externality (in the form of work-related fatalities and injuries), which provides a rationale for government intervention to improve the efficiency of resource allocation. Negative externalities are normally dealt with through the:

- imposition of a tax or charge on the activity so financial costs are better aligned with economic costs;
- creation of tradeable but limited rights to engage in the harmful activity; and
- imposition and enforcement of minimum standards to minimise externalities.

Given the nature of the externality (human deaths and injuries), the use of tradeable rights is not considered appropriate. Hence, the RWA Act imposes minimum standards concerning a specific aspect of OHS, thus imposing a “charge” on the activity of particular employers such that their financial costs are more closely aligned with the economic costs to society.

While the existence of market failure provides a rationale for government intervention, in accordance with COAG Principles and Guidelines it is still requisite to demonstrate that the intervention is in the net public benefit and that the minimum necessary regulation is adopted to achieve the stated objectives.

The review considered a range of alternative options (including that of no regulation at all – the base case scenario) to determine which would provide the greatest net public benefit. Option 2 was determined to be the preferred option.

Recommendation

On the basis of the review undertaken, it is recommended that the existing RWA Act be replaced with Alternative Option 2.

Option 2 retains the RWA Act – but one that is significantly amended and updated to ensure it is performance focused (not prescriptive in nature), obsolete or inconsistent sections of the RWA Act (with respect to the OHS Act) are repealed, and guidance to assist employers is provided via a Code of Practice.