

A photograph of a family walking in a field. In the foreground, a man, a woman, and a child are walking away from the camera. In the background, there is a cow and a sheep. The image is overlaid with a semi-transparent green and yellow filter.

Submission of the
National Farmers' Federation -
Senate Committee Inquiry into Provisions of
The Fair Work (Transitional Provisions and
Consequential Amendments) Bill 2009

April 2009

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Executive Summary

- **The NFF represents the interests of Australian agriculture in all States and Territories, and across all major commodities.**
- **The NFF continues to hold concerns over the implications of any failure by State Governments to refer their plenary powers to legislate with respect to industrial relations.**
- **Over 90% of all Australian farm businesses are unincorporated, meaning that a significant majority of the *WorkChoices* reforms did not apply to them. The same issue will arise under the current reforms to the extent that referrals of power by State Governments do not occur.**
- **The Bill preserves the current Schedule 6 in the Act, which retains transitional awards. The vast majority of farmers are covered by these awards. The NFF commends the Federal Government in retaining Schedule 6 awards. The NFF suggests, however, that although organisations bound as at the *WorkChoices* reform commencement remain bound, unincorporated new members of those organisations should also be able to be bound by the ongoing transitional awards.**
- **The NFF is concerned that the commencement of unfair dismissal changes earlier than 1 January 2010 will create confusion, particularly for small businesses, from a compliance perspective.**
- **The NFF believes that commencement should be preceded with considerable employer and employee education and as such welcomes the recent Government announcement of an education program.**

1. BACKGROUND

- 1.1. The NFF represents agricultural employers in all States and Territories, and across all major agricultural and horticultural commodities. The NFF has a long and involved history in advocacy relating to industrial relations within the agricultural sector, and has represented agriculture on the National Workplace Relations Consultative Council and the Committee on Industrial Legislation, in particular, throughout consultations on the current raft of reforms.
- 1.2. The current State-based member organisations of the NFF are the NSW Farmers' Association, the Victorian Farmers' Federation, Agforce Queensland, the Tasmanian Farmers' and Graziers' Association, and the Northern Territory Cattlemen's Association.
- 1.3. The current commodity-based member organisations of the NFF are the Australian Cane Growers' Council, Australian Dairy Farmers Limited, the Australian Dried Fruits Association, Cattle Council of Australia, Cotton Australia Limited, Grains Council of Australia, Ricegrowers' Association of Australia, Sheepmeat Council of Australia and Woolproducers.
- 1.4. The NFF has participated in aspects of many recent reforms to workplace relations, focusing in particular on the need for a flexible workplace relations system catering to the unique requirements of employers, and opportunities for employees, within the industry. Agricultural employers look to the reform process to deliver a simpler system regulating their workplaces, for example, through provision of a single, national system.
- 1.5. The cumulative complexity of the federal workplace relations system, coupled with those of the various States prior to March 2006 already presented agricultural employers with a complex range of compliance burdens and uncertainties which applied to the engagement of staff. Following the introduction of the *WorkChoices* reforms, the additional question of whether an employer was a constitutional corporation only further complexified the capacity of farm employers to understand their obligations under those reforms.

- 1.6. The vast majority of farm employers in Australia are not constitutional corporations, relying heavily on the existing transitional provisions contained in Schedule 6 of the current *Workplace Relations Act* (“the Act”). The NFF has previously commissioned extensive and detailed taxation advice on the viability of farm businesses incorporating their structures. The advice resoundingly indicated that incorporating a business to achieve national coverage was in no way cost-beneficial. The NFF is therefore concerned that the outcome for farm employers will rely heavily on the extent of State referral of powers or other mechanisms to achieve a uniform harmonisation of the workplace relations system.

2. CURRENT TRANSITIONAL ARRANGEMENTS

- 2.1. Schedule 6 clause 4 provides for a transitional period in which federal awards continue to apply where an excluded employer was bound prior to 26 March 2006. Clauses 17 – 26 set out the allowable and non-allowable matters in relation to transitional award content, applying the same criteria which relate to prereform awards. The key exception is that transitional awards may continue to deal with matters contained in the Australian Fair Pay and Conditions Standard (“the AFPCS”). While in force, federal transitional awards remain enforceable under clause 107 of Schedule 6, and prevails over State laws or awards to the extent of any inconsistency under clause 60 of Schedule 6.
- 2.2. Schedule 1 (3) repeals Schedules 2 – 9 of the Act, including Schedule 6 which makes provisions for the current transitional employers under the *WorkChoices* reforms. However, Schedule 20 sets out that Schedule 6 of the Act will continue operating as continuing Schedule 6 of the new legislation.
- 2.3. The various reform legislation therefore appears to preserve the current transitional federal awards from the present, beyond 1 January 2010. On 1 January 2010, modern awards will replace existing instruments (prereform awards) in respect of incorporated

employers. Transitional awards will continue to apply under continuing Schedule 6 of the new legislation, subject to the changes outlined in Schedule 20 of the Bill until 27 March 2011. The NFF commends the Federal Government on the retention of Schedule 6.

- 2.4. The NFF believes that given the limitations under Schedule 6, that the capacity of named federally registered organisations should be extended to enable them to take on new members to give effect to coverage for new members under the transitional award. Specifically, Subitem 4 (2) (a) binds *all excluded employers that were bound by the award immediately before the reform commencement*. Subitem 4 (2) (e) further binds entities which were not employers or employees immediately prior to the *WorkChoices* reform commencement but were bound by the award.
- 2.5. The NFF submits that the Bill should amend subitem 4 (2) (e) to bind *all* members, whether membership commenced prior to or after the *WorkChoices* reform commencement, of organisations which were bound immediately prior to the reform commencement. In essence, whilst organisations must have been bound immediately prior to the reform commencement, the NFF believes that all unincorporated members of those organisations should have access to transitional awards.

3. COMMENCEMENT DATES AND COMPLIANCE

- 3.1. The NFF does not support commencement dates which are inconsistent with those outlined by the Government ahead of the 2007 federal election. That is, we do not support the 1 July 2009 commencement of the new unfair dismissal laws, right of entry and stand down arrangements.
- 3.2. It is vital that prior to such significant changes taking effect that is, there at least be clarity about applicable terms and conditions at the workplace through education.

- 3.3. Consistency in commencement reduces the level of complexity of change and enables significant education to occur before commencement.

4. EMPLOYEE AND EMPLOYER EDUCATION

- 4.1 The NFF strongly believes there should be an extensive, formal education campaign, providing a clear insight into the reforms. The NFF supports and welcomes the Fair Work Education and Information Program announced by the Government.

5. TAKE-HOME PAY ORDERS

- 5.1 The NFF does not oppose the concept of take-home pay orders as an alternative to grandfathering provisions in individual awards. However the NFF would oppose such orders unless they were balanced by access to counterpart orders in favour of employers.
- 5.2 The incidental cost impact on business arising from award modernisation and the reform implementation is now becoming significantly clearer. Given these clearer indications, it is essential that a corresponding opportunity exist for those employers heavily out of pocket, to seek such orders. The importance of their capacity to retain and engage staff is particularly vital given the current global financial circumstances, and the industry-specific hardships such as drought and other natural disasters, which threaten an otherwise robust industry's capacity to lead an employment-based recovery from both phenomena.
- 5.3 The utilisation of employer orders may well be minimal and will be dependent on the final transitional provisions incorporated into modern awards as currently being considered by the AIRC Full Bench on the award modernisation process.