



National Farmers' Federation

Submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Migration Amendment (Protecting Migrant Workers) Bill 2021

1 February 2022

NFF Member Organisations





The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic and environmental fabric.

Social >

In 2019-20, there are approximately 87,800 farm businesses in Australia, the vast majority of which are wholly Australian owned and operated.

Economic >

In 2019-20, the agricultural sector, at farm-gate, contributed 1.9 per cent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production is forecast to reach \$78 billion in 2021-2022.

Workplace >

In 2021, the agriculture, forestry and fishing sector employ approximately 313,700 people, including over 215,800 full time employees.

Seasonal conditions affect the sector's capacity to employ. Permanent employment is the main form of employment in the sector, but more than 26 per cent of the employed workforce is casual.

Environmental >

Australian farmers are environmental stewards, owning, managing and caring for 49 per cent of Australia's land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 7.79 million hectares of agricultural land set aside by Australian farmers purely for conservation/protection purposes.

In 1989, the National Farmers' Federation together with the Australian Conservation Foundation was pivotal in ensuring that the emerging Landcare movement became a national programme with bipartisan support.

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Introduction

The explanatory memorandum for the Migration Amendment (Protecting Migrant Workers) Bill 2021 (**the Bill**) outlines three stated aims for the Bill :

- To strengthen the current legislation that protects migrant workers from exploitation in the workplace by enhancing protections for migrant workers and increase sanctions under the *Migration Act 1958* against those who would seek to exploit migrant workers,¹
- To respond to the ‘longstanding problem’ of ‘underpayment and exploitation of migrant workers by unscrupulous employers’, which takes the form of withholding passports and visas, forcing migrant workers to participate in work outside of their work restrictions and threats of reporting them for breaching their conditions.
- To prevent any damage to Australia’s standing and reputation internationally by ensuring that migrant workers are protected and to prevent mistreatment.

These aims are to be accomplished by introducing two new types of offences in relation to employers coercing or exerting undue influence or pressure on migrant workers,² provide the Minister with powers to prevent a person who has been subject to a ‘migrant worker sanction’ or ‘work-related offence’ from engaging any new foreign workers for a period, thus labelling them as ‘prohibited employers’ under the Bill.

Other provisions include the requirement for employers to use the Visa Entitlement Verification Online system (**VEVO**) to verify a non-citizen workers’ immigration status and work-related conditions, adds powers for the Australia Border Forces (ABF) to issue ‘compliance notices’ where the officer reasonably believes that a person has contravened the relevant civil or criminal provisions.

Overall, the NFF are supportive of the Bill and it’s aims in order to improve work conditions for migrant workers and punish bad actors in the space.

¹ Explanatory Memorandum

² Sections 245AAA and 245AAB of the Bill.

There are however, some aspects which the NFF would like to see noted and/or addressed, namely;

- That the Bill may disproportionately affect farmers and agriculture, as opposed to other sectors.
- To ensure that contraventions are treated based on their severity, to ensure that responses are proportionate to the nature of the contravention
- The NFF welcome the inclusion of labour hire companies in the new conditions in the Bill. However, there is a real risk that labour hire companies who contravene the provisions could simply “phoenix” and start anew.
- Finally, the NFF call for the Government to consider educational or informative materials to ensure farmers and employers understand their obligations under the new regulations and hence can comply.

Migrant Workers in the Agricultural Industry

Based on the figures provided from the ABARES Horticulture labour force survey, in the 2020-2021 financial year, roughly 24% of the horticultural workforce was made up of temporary migrants and visa holders.³ This percentage is likely to be far higher when all agricultural businesses are factored in (not only horticulture but broadacre and alternative farming). This is predominantly through programs such as the Working Holiday Makers, PALM scheme, and various temporary and permanent skilled migration arrangements. There are numerous causes. For example, the urbanisation of the population and the movement of the workforce away from rural Australia where most farming jobs are now located is a significant factor. The social preference of ‘white collar’ work is another. A primary reason for such a reliance on non-citizen labour is the seasonal nature of labour demands in the industry. For example, the demand for labour during harvest,⁴ or during peak livestock breeding periods, grows exponentially and then declines again outside of these periods.

Due to this, this Bill has the potential to affect agriculture and farmers far more significantly than most other industries who do not rely as much on migrant

³ Percentage based on data provided in the “horticulture farm labour use”

<https://www.awe.gov.au/abares/research-topics/labour#broadacre-and-dairy-farm-labour-use>

⁴ A period of roughly 3-4 months depending on the type of produce being harvested

workers. This is something that the Department must consider when passing this Bill and in the delivery of the Act. It is extremely important to the NFF that the Minister and the ABF use the new administrative powers in a careful and considered manner, to ensure outcomes are always fair and just. The government must bear in mind, in exercising these new powers, that prohibiting a piggery in Central Western NSW from accessing migrant worker could have a catastrophic impact on the business; dramatically different to the effect of a similar sanction on a restaurant in East Sydney.

For example, employers should not be prohibited or given extensive remediation requirements from a compliance notice if the contravention is a simple and unintentional payroll issue/mistake which could be easily corrected, the extent of the use of powers and conditions should be proportionate to the type and nature of potential contravention. Factors such as whether farmers are certified under programs such as FairFarms or SEDEX must also be taken into account in the decision-making process. Those who have the relevant certifications have brought their workplace practices in line with the Fair Work federal system and International Labour Standards, thereby demonstrating their commitment to implementing fair practices in the workplace. Looking favourably on these farmers and considering them when presiding over administrative decisions will encourage compliance and further uptake of the program, thereby improving workplace standards across the industry. It must also bear in mind that the primary sanctions for any such misconduct are those available under the Fair Work IR system. As such, the new sanctions should usually be limited to occasions where those 'industrial relations' sanctions have failed or are demonstrably inappropriate.

Further to the point of this bill potentially affecting farmers disproportionately, not being able to access any non-citizen labour could cause extreme financial hardship for farmers, leading to missed harvests the closing of businesses, due to the heavy reliance on temporary visa holders in the industry, particularly in horticulture.

For this reason, it is important to the NFF and farmers that the Minister and Government actors exercise their powers in a careful and considered way, to ensure that bad actors are punished accordingly, and those that are trying to do the right thing are allowed to carry on in their business.

Labour Hire Companies

The NFF support the introduction of new offences relating to the coercion of migrant workers, to ensure that their potential vulnerabilities, i.e being away from home, English as a second language etc cannot be exploited by bad actors, and to ensure fairness in the workplace for all employees. The NFF also support the formalisation of the use of the VEVO system, which will go towards ensuring that all parties related to the employment are adequately aware of the workers visa and conditions.

The NFF also welcomes the introduction of compliance notices, as a practical and less-punitive ways in which ABF officers can confirm that employers observe workers' rights and entitlements, and clearly set out how employers can ensure their compliance. We do note however, concerns regarding certain methods that labour hire companies could use to avoid serving out their period as prohibited employers or other conditions.

In the agriculture sector, labour hire providers are often utilised to access migrant labour hire. This is due to a few reasons, primarily — again — the seasonal nature of work, making it impractical for farmers to employ many workers permanently, but also to allow smaller farms and employers to access the non-citizen workforce, whereas they otherwise would not have the resources or technical know-how to enter into temporary visa holder programs themselves or set up sponsorship arrangements directly. In this instance, labour hire companies have the programs set up and workers ready to deploy to these smaller farms who are desperate for additional labour.

The primary concern for the NFF is their ability to “phoenix” and then carrying on business again under a new name and ABN. This is particularly applicable to labour hire companies and less so farmers or other agricultural employers. The reason for this is that many of the smaller labour hire companies are capable of operating out of the owner or directors' residence, they do not require much, if any, equipment, are highly flexible and can have little start-up costs other than registration fees.

Whereas farmers have longstanding financial and emotional investment into their land, often have had to put up significant capital in the form of procuring farming

equipment and machinery, livestock, seed etc. Therefore, making it extremely difficult if not impossible for a farmer to “phoenix” and start up again rapidly in order to avoid penalties.

The flexibility of many labour hire companies means that certain bad actors could, for example, be declared a prohibited employer by the Minister. They can then dissolve the company, register a new ABN and business name and get back to hiring and deploying migrant workers, due to the sheer number of small labour hire enterprises and the lack of government oversight on the sector.

Of course, a lot of these concerns would be addressed by a robust national labour hire licensing scheme. Although the Federal government indicated that it intended to introduce the scheme more than 3 years ago, there has been little concrete development. We submit that these circumstances only further demonstrate the need for uniform National Labour Hire Regulation, in order to maintain integrity, ensure migrant workers are safe, treated fairly and to prevent unscrupulous employers getting away with avoiding penalties imposed on them for contravention of the Migration Act.

Education and Information Materials for Employers

Finally, the NFF is strongly supportive of the Department or Government providing further educational or informational materials regarding the new provisions and sanctions that this Bill introduces, should it be successful in being passed. This will allow farmers to fully understand the provisions and the practical effects it will have on their business and hiring practices, therefore increasing uptake and compliance across all sectors. Additionally, informing migrant workers of their rights and the new provisions will allow workers to feel confident to have conversations with their employers regarding it or report bad behaviour, thus improving compliance and work conditions for migrant workers.

Conclusion

As discussed throughout this submission, the NFF supports the Bill and the Government's aims in ensuring that bad actors who are taking advantage of migrant workers are adequately punished and/or prevented from hiring further non-citizens. It is important to ensure that Australian employers are doing the right thing, and that the reputation industries or Australia as a whole are not compromised due to the poor treatment of migrant workers by some employers.

Nonetheless, we strongly encourage Government and the Committee to consider the risk of agriculture being disproportionately affected due to its reliance on international labour, the behaviour of some labour hire providers and the need for National Labour Hire Regulation and for educational materials to be provided to ensure widespread comprehension of the new provisions, increasing compliance and, ultimately, conditions for non-citizen workers.