
**NFF SUBMISSION TO THE
INQUIRY INTO INDEPENDENT
CONTRACTING & LABOUR
HIRE ARRANGEMENTS**

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CONTENTS

INTRODUCTION	3
AGRICULTURAL WORKFORCE	5
RESTRICTIONS ON CONTRACTING AND LABOUR HIRE ARE FLAWED	7
NEED FOR FEDERAL GOVERNMENT INTERVENTION	10
PRACTICAL CONSIDERATIONS	12

INTRODUCTION

1. The National Farmers' Federation (NFF) seeks to provide information to the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation inquiry into independent contracting and labour hire arrangements.
2. NFF strongly supports the ability of the workforce to be coordinated through independent contracting and the use of labour hire firms.
3. While not precisely quantified, NFF believes there is a significant usage by farmers of independent contractors and labour hire firms for work undertaken on Australian farms.
4. The strength of independent contractors and labour hire firms is important for the agricultural industry due to the seasonal nature of the industry.
5. NFF supports the importance of flexibility and independence of contractors and labour hire firms as a viable alternative to direct employment for farmers'.
6. NFF is highly critical of the moves by a number of State Governments to restrict the traditional role of independent contractors and labour hire firms.
7. NFF supports the concept of an Independent Contractors Act as outlined by the Federal Government during the 2004 Federal Election as a mechanism to confirm the inherent concepts of independent contracting.

8. NFF is frustrated with the different legal requirements in different jurisdictions that are not establishing a level playing field and create confusion.
9. Given the various common law and Government regulation over the relationship between businesses and contractors/labour hire firms, NFF is concerned as to the complexity of the law at present that highlights the imperative need for a codified unitary system.
10. NFF has attempted to assist farmers in their arrangements with contractors/labour hire firms through the development of the NFF Independent Contractors Kit. The development of the kit highlighted the difficulties and variation across jurisdictions in dealing with contractors and labour hire firms.

AGRICULTURAL WORKFORCE

- 11. The most recent figures from the *Australian Bureau of Statistics, Australian Labour Market Statistics, Category 6105.0*, record 313,300 people employed in agriculture as at November 2004.
- 12. This compares to 320,400 in November 2003 (*table 2.2 at page 52 of the January 2005 publication and table 2.2 at page 45 of the January 2004 publication*).
- 13. This most recent downturn in employment figures is of particular concern to the industry given that before the drought agricultural employment was around 390,000 (*Australiancommodities, abareconomics , vol 12, no 1, March quarter, table 10, p 239*).
- 14. In terms of specific industries, employment in agriculture can be broken down to the following (*Australian Agriculture and Food Sector Stocktake, Department of Agriculture, Fisheries and Forestry, March 2005, [Stocktake], pp 26-72*):

Major Farm Industries - Employment	
Horticulture	25%
Beef	22%
Mixed cropping (grain/sheep or grain/cattle)	14%
Dairy	10%
Sheep (meat & wool)	8%
Cropping	6%
Wine Grapes and Wine	5%
Sugar	3%
Cotton	2%
Poultry	1.5%
Pig Meat	1%

15. In terms of a breakdown of independent contractors and employees of labour hire companies in agriculture, there is insufficient data available other than approximately 14.5% of employed persons in the agricultural industry identify themselves as self-employed contractors (*Productivity Commission Staff Research Paper, Self-Employed Contractors in Australia: Incidence and Characteristics, September 2001*). This would not cover employees of contractors or labour hire firms.
16. It is assumed that independent contracting and labour hire employment would be prevalent in all industries in agriculture with tasks covering the full spectrum of agricultural work but can include:
- Shearing & wool classing
 - Fruit and Vegetable harvesting & pruning
 - Crop & Cotton Harvesting
 - Chemical Spraying
 - Specialist services such as agronomy and artificial insemination
 - Mustering
17. The agricultural industry has always relied on a well-organised and accessible contracting/labour hire service that is predominantly due to seasonal factors that may require large numbers of workers for a short period of time that is exacerbated by the remoteness of farming businesses.

RESTRICTIONS ON CONTRACTING AND LABOUR HIRE ARE FLAWED

18. NFF submits that it is vital that the resolution of labour shortage problems currently being experienced in the agricultural industry are not hampered by unnecessary and flawed restrictions on the traditional way in which independent contracting and labour hire firms have operated.
19. NFF is critical of moves by the State and Territory Governments to introduce legislation to restrict and hinder the growth in contracting/labour hire arrangements.
20. NFF criticism relates particularly to deeming provisions and the broad definition of who is a “worker” in a range of legislative instruments.
21. NFF supports the importance of flexible workplaces that encourage productivity growth. In most circumstances, the restrictions placed on contracting/labour hire by State Governments remove the flexibility so desperately needed in a competitive international industry as agriculture.
22. Business should not be put in a position to defend themselves through an adversarial process to justify the contracting/labour hire arrangements they have put in place.
23. A recent example of the problems faced by the agricultural industry in terms of contracting and its interaction with State legislation is *The Australian Workers’ Union, Queensland v Hammonds P/L & oths, No B885 of 1999*, a decision of the Full Bench of the Queensland

Industrial Relations Commission (the Hammond Case). The decision of the Commission is attached and marked A.

24. In the Hammond Case, the inflexibility of the state industrial award placed restrictions on the way shearing could be undertaken. To implement greater flexibility Hammonds P/L coordinated independent shearing contractors to shear and the arrangement was made in such a way that the contractors were not a party to the Award. The matter was disputed by the AWU and a particular issue was whether the arrangement evoked the definition of worker in the Queensland Industrial Relations Act 1999.
25. Hammonds P/L was successful in defending the arrangement, but NFF submits that such a process should not have been required in the first instance particularly when there was no complaint from the workers concerned.
26. NFF is concerned with the vigorous attempts by State Governments to restrict the flexible arrangements of contracting/labour hire at a time when there are labour shortages that require greater flexibility rather than restrictions on flexibility.
27. A paternalistic approach to contracting/labour hire is simply not appropriate and is inconsistent with the capacity of business to operate in a global competitive environment.
28. Problems associated with the approach by State Governments also create duplication of costs for farmers and contractors. For example, in some jurisdictions both the farmer and the shearing contractor are required to pay workers compensation for the shearers and shed hands.

29. NFF does acknowledge, however, that the NFF call to maintain traditional contracting arrangements should not be interpreted as support of sham arrangements or arrangements where a worker is exploited. Safety nets can be established without the extreme measures more recently implemented at a State level.

NEED FOR FEDERAL GOVERNMENT INTERVENTION

30. To encapsulate the premise of contracting that enables parties to determine their own arrangements without paternalistic intervention of regulators, there is now a role for the Federal Government to develop legislation to override recent legal developments that frustrate the very nature of independent contract arrangements.
31. NFF supports the proposal of the Federal Government outlined during the Federal Election in 2004 (*Protecting & Supporting Independent Contractors, 26 September 2004*), that is, there is a requirement to introduce an Independent Contractors Act to ensure there is a concise and unitary approach to contracting that removes the impediments recently introduced in various State jurisdictions and the complex tests established under common law.
32. It seems incongruous that NFF seeks legislative intervention to remove the impediments of other legislative intervention but the importance of contracting/labour hire arrangements is a critical component of the workplace reform and as such must be included in any legislative reform being considered by the Federal Government.
33. In any consideration of an Independent Contractors Act, the test as to how you define an “independent contractor” will be of particular importance. NFF looks forward to the discussion paper on the Federal Government’s proposals that we understand will be published in the coming months.

34. Independent Contracting and labour hire arrangements should not only been seen as part of the workplace reform agenda but also an integral part of the growth and success of small business in Australia and hence should be considered as part of any small business policy.
35. The vast majority of Australian farmers' are small businesses that are increasingly relying on the support and services provided by contractors and labour hire firms.
36. While independent contractors have been a traditional part of farming life, the prevalence and growth of labour hire firms is becoming increasingly important given the complexities of employment. The utilisation labour hire firms while more expensive than direct employment in some instances, removes the administrative burdens of the requirements to employ. Any federal government legislative intervention should take particular regard to the importance that contractors/labour hire play in the success of farming small businesses.

PRACTICAL CONSIDERATIONS

37. NFF recently recognised that the increasing complexities for farmers in relation to the utilisation of independent contractors and labour hire firms was leading to the potential for arrangements at a farm level to constitute an employment relationship without the knowledge of the farmer or the service provider.
38. Independent contracting and labour hire firms can operate for a long period of time pursuant to the same arrangements regardless of the legal changes that have occurred in more recent years.
39. As a consequence, NFF has devised an Independent Contractors Kit that explains the rights and obligations on the farmer and also provides a basic template contract. The Kit is attached and marked B.
40. Issues that are covered in the template contract include superannuation, workers compensation, labour laws, and immigration regulations.
41. The Kit has been very well received and evidence suggests that there is a need to increase the awareness of business as to the legal requirements that exist.
42. More importantly, the provision of the Kit and the awareness campaign by NFF has only heightened the need for a removal of the complexity and impediments to independent contracting and labour hire arrangements in Australia.