



17 June 2005

The Secretary of the Committee  
House of Representatives Standing Committee  
on Employment, Workplace Relations and Workforce Participation

by email: [ewrwp.reps@aph.gov.au](mailto:ewrwp.reps@aph.gov.au)

Dear Secretary

**re: Inquiry into Independent contractors and labour hire arrangements**

Please find attached, a submission from the Victorian Association of Forest Industries to the Inquiry into independent contractors and labour hire arrangements.

This submission is relevant to each of the issues that the Committee has been requested to inquire into and report on by the Minister for Employment and Workplace Relations.

If you require further information in relation to this submission, please contact:

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Yours sincerely

Patricia J Caswell  
Chief Executive Officer

### **Victorian Association of Forest Industries:**

The Victorian Association of Forest Industries (VAFI) is the peak industry body representing Victorian hardwood timber processors.

VAFI is a registered Organisation under the Workplace Relations Act 1996.

VAFI membership represents, by volume, 99% of wood fibre processors and approximately 76% of sawlog processors in Victoria

### **Victorian hardwood timber industry:**

- Comprises approximately 50 sawlog and fibre processors
- Is dependent (90%) on wood and fibre supplied by a Government Business Enterprise, VicForests.
- VicForests was established by Government to supply wood in an open and transparent market based process consistent with National Competition Principles.
- Sawlog and fibre processors are market exposed to domestic and international competition
- Traditional supply chain arrangements (harvesting and haulage) have been managed via competitive contracts.
- Harvesting and haulage contractors vary in size and configuration from sole traders to sophisticated organisations with multi million dollar turnover.

### **The Issue:**

The Victorian Government has introduced to the Parliament a Bill:

*Victorian Owner Drivers and Forestry Contractors Bill 2005 (the Bill)*.

The Bill was given its second reading in the Victorian Legislative Assembly on 21 April 2005.

VAFI submits that the Bill:

- Contains provisions that will restrict competition in the market for the harvesting and transport of forest products
- Is a flawed statutory scheme that confers very broad discretionary powers on the Minister for Industrial Relations to implement by regulation codes setting standards of conduct and practice in relation to the engagement of harvesting and haulage contractors
- Is an unwarranted intervention in business to business relationships between contracting parties that unnecessarily interferes with (and indeed distorts) the normal negotiating process.
- Has the potential to prevent needed industry reform of work practices in an industry that faces increasing cost pressures and domestic and international competition
- Carries the strong potential to entrench inefficiency and add costs to hirers and thereby undermine competitiveness in product markets
- Provides for creation of an administered contracting structure, including regulated contracting rates for part of the supply chain (harvesting and haulage contractors) in an industry where the hirer is market exposed

- Provides blanket TPA exemptions (and therefore removes ACCC scrutiny) to a broad discretionary process that could lead to potentially detrimental 'standards' which cannot be scrutinised on competition principles

**Relevance of the issue to this inquiry:**

The Bill will:

- Fundamentally change by way of codified and regulated arrangements, the nature of independent contracting arrangements in the Victorian forest and forest products industry (including hardwood and softwood industries). No other industry in Victoria has been isolated for similar treatment or intervention
- Result in codified and regulated contracting arrangements in Victoria that are inconsistent with other jurisdictions.
- Give rise to contracting arrangements in the Victorian forest and forest products industry that are inconsistent with a modern Australian economy through the an unwarranted, anti competitive intervention in business to business contracting arrangements
- Give rise to contracting arrangements that are not legitimate as a consequence of the structural arrangements established through the implementation and operation of the Bill.

**Related documents:**

- Summary of Issues, Victorian Association of Forest Industries (attached)
- Correspondence from Freehills on behalf of VAFI to National Competition Council, 15 June 2005 (separate file)

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### Owner Drivers and Forestry Contractors Bill: Summary of issues

Clause	Provision	Concern
Pt 1 - Preliminary	Purpose: To regulate the relationship between persons who contract to transport goods ...or harvest forest products	Administrative intervention in market based system. Inconsistent with Govt policy.
	Selection of Forest Industries for particular treatment	Forest Industries contractual arrangements subject to administrative intervention that no other industry is subjected to
	Extends coverage to include corporations (other than public companies) as well as owner drivers / contractors.	This includes the range of businesses from sole traders & partnerships to sophisticated businesses with multi million \$ turnover. Unnecessary intrusion into business to business dealings
Pt 2 - 14	Rates & Costs Schedules Industry Council to develop / review not less than every 12 months	<p>How are "typical costs" to be determined by FIC</p> <p>Structure of FIC provides for "payees" to dominate deliberations of FIC</p> <p>Reference to hourly rates should be reference to rates in applicable Award.</p> <p>Business administration costs – enormous variation in admin costs depending on size, structure and efficiency of business and business skills of management</p> <p>Reference to self funding superannuation should be reference to Statutory Super if contractor was an employee</p> <p>Finance costs – is this reasonable - will vary based on risk profile of particular business operator</p> <p>Cost of engaging applicable relief labour – unlimited scope. Define relief, define</p>

		<p>reasonable costs.</p> <p>No reference as to whether rates schedule is to inform or to serve as minimum rate payable.</p> <p>Rates schedule could potentially be embraced within a Code of Practice developed by FIC and by implication become minimum rate</p>
Pt 2 - 21	Notice of Termination	Minimum period of notice effectively 3 months – no reference to Force Majeure event affecting hirer’s ability to provide work. Hirer potentially liable to pay even when no service being provided
Pt 5 – 33	Dispute	Scope is 12 months in respect of termination and up to 6 years post any other dispute.
Pt 5 - 37	Costs of alternative dispute resolution	<p>If parties cannot agree – costs to be shared equally.</p> <p>Hirer exposed to costs of vexatious claims.</p> <p>Many more contractors than there are hirers</p>
Pt 5 - 40	Tribunal	<p>Scope for application under the Act is very broad</p> <p>Up to 6 years</p>
Pt 5 -48 & 49	Extension of a contract variation order	<p>A contract variation order made by the Tribunal may, on application by the Contractors’ agent, be extended to be binding on all hirers who enter or have entered into a regulated contract of the particular class to which the initial “test case” applies.</p> <p>ie; Contractors can run test cases to win binding decisions on a range of contracts and across a range of hirers.</p>
Pt 7 – Div 2	Forest Industry Council - functions	<p>Scope of functions very broad:</p> <ul style="list-style-type: none"> <li>- Codes of practice</li> <li>- Rates &amp; costs schedules</li> <li>- Model contracts</li> <li>- Any other matters relevant to contracts</li> <li>- Any other matters relevant to commercial practices</li> </ul>

		- Any other advice to Minister even when not requested to do so
Pt 7 - 59	<p>Forest Industry Council Composition</p> <p>(refer also Schedule 1- 9. Resolutions without meetings)</p>	<p>10 members, 1 non voting “Payees” have 4 of the 9 votes “Payers” have 2 VicForests (an agency of Government) has 2 votes – would appear to be indifferent. Independent Chair (an appointee of Government) has 1 vote Of 9 voting members, require 5 to support any resolution. Given that Govt has developed the Legislation in consultation with the VFHCC and the CFMEU, it is entirely realistic to anticipate that “payers” will be faced with a hostile Council. For payers to carry a vote would require VAFI, A3p, VicForests plus independent chair to vote in a bloc or alternatively VAFI, A3p, VicForests plus 1 vote from CFMEU or VFHCC – this is not going to happen on matters of significance to the VFHCC, CFMEU and Government.</p>
Pt 10- 68	Transitional arrangements	<p>Would appear to make requirements retrospective to include existing contracts. Implications for rates, disputes, conflict with existing contractual provisions.</p>