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**NFF Submission to the Senate
Employment, Workplace Relations &
Education Legislation Committee
Inquiry into the Workplace Relations
Amendment (Termination of
Employment) Bill 2002**

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Executive Summary

- The National Farmers' Federation (NFF) represents approximately 200,000 farming businesses throughout Australia of which 98% are defined as small businesses.
- The major labour force component in the agricultural industry is the owner and their family supplemented by full-time, part-time, casual and/or contract labour.
- NFF submits that small businesses are particularly affected by cost impacts, to the extent that any additional cost and administrative burdens may have severe adverse consequences on a business.
- NFF supports the enactment of the *Workplace Relations Amendment (Termination of Employment) Bill 2003 (Termination Bill)*.
- NFF supports the objective of the *Termination Bill* to minimise the confusion between federal and state jurisdictions. However, the jurisdictional extension may have a limited impact on farming businesses due to certain circumstances prevalent in the farming sector.
- NFF supports the consideration of a uniform national system for termination of employment provisions with the objective to minimise the complexity and confusion generated by multiple systems.
- NFF supports the series of amendments contained within the *Termination Bill* that are designed to specifically assist small business and to improve the general operation of the unfair dismissal provisions.

1. Introduction

National Farmers' Federation (NFF) represents more than 200,000 farming businesses across Australia of which 98% are deemed to be small business.

NFF has consistently supported reform of the *Workplace Relations Act* to remove the restrictions and difficulties faced by farmers in respect to dealing with complex regulation over matters pertaining to the employer – employee relationship. Concern has been raised by farmers as to the costs and problems faced in dealing with provisions relating to termination of employment.

An impediment to employment growth is the negative impact (both real and perceived) of regulation over the employment relationship. The pursuit of regulatory amendment by NFF is to minimise the implications of the substantive costs and administrative burdens placed on employers.

The complexity of the termination provisions coupled with the confusion over the duplication of jurisdictions has created a minefield for employers, particularly those who are not in a position to employ human resource specialists.

NFF supports the *Termination Bill* as a means to partially address the concerns of NFF. The *Termination Bill*, however, should not be considered in isolation but as a package with other Bills designed to more effectively assist business in relation to the termination provisions contained within the *Workplace Relations Act*.

2. Agricultural Business

National Farmers' Federation (NFF) represents approximately 200,000 (according to tax office figures) farming businesses throughout Australia, around 98% of those businesses would be defined, pursuant to turnover figures, as small businesses (less than \$10 million in turnover) or around 92% are micro (less than \$1 million in turnover).

The structure and characteristics of agricultural businesses can be different to those in other industries. Agricultural businesses tend to be dominated by owner operated family businesses who supplement their labour requirements by employing full-time, part-time, casual and/or contract labour as required.

Casual employees are prevalent within the industry due to the seasonal nature of the business (*ABS Forms of Employment Survey Cat No 6359.0*).

Contained within the *Termination Bill* is a definition of small business as being a business employing less than 20 employees. Specific information as to how many agricultural businesses employ less than 20 employees is not provided in ABS statistics. ABS statistics used to define an agricultural small business are calculated through a measure of the Estimated Value of Agricultural Operations. ABS has determined that agricultural small businesses are those businesses as having an EVAO of between \$22,500 and \$400,000. In utilising that measure, ABS estimated that 86% of agricultural businesses are deemed to be small businesses (*p 80, ABS, Small Business Australia 2001, Cat No 1321.0*).

A recent agricultural industry research study in NSW found that 92.8% of employers that responded to the survey employed less than 20 employees with 53.8% of respondents employing 4 or fewer employees.

For the financial year 2001/2002 ABS estimated that agricultural businesses employed 381,000 people including seasonal casual employees (*ABS, The Labour Force, Australia, Cat No 6291.0*). This figure is unfortunately declining due to the impact of drought with the November 2002 ABS figures showing a decrease of 70,000 people working in agriculture in the last quarter (*ABS, Labour Force Australia, November 2002, Cat No 6203.0*).

Many rural communities depend on agriculture for their prosperity. Agriculture contributes more than 30% of employment in 66% of small non-costal towns and contributes more than 50% of total employment in 28% of small costal towns (*p 38, ABARE, Country Australia*).

In reference to the statistics cited above, NFF submits that the vast majority of agricultural employers would be defined as a small employer for the purposes of the definition contained within the *Termination Bill*. Further, agricultural businesses employ a substantial number of people particularly in regional areas highly reliant upon employment within the agricultural industry.

3. Jurisdictional Issues

It is the intention of the *Termination Bill* to extend the coverage of the federal termination provisions to all constitutional corporations regardless of whether they are covered by a federal industrial instrument. Further, that employees covered under the federal jurisdiction will not have the right to pursue an action for termination of employment within State jurisdictions.

NFF supports the objective of the *Termination Bill* to minimise the confusion between federal and state jurisdictions. However, the jurisdictional extension will have a limited impact on farming businesses due to certain circumstances prevalent in the farming sector.

Federal awards cover a majority of farming businesses, and as a result a majority of employees in the farming sector are already covered by federal legislation governing termination provisions. In a submission to the Senate Employment, Workplace Relations & Education Committee dated 10 May 2002 NFF outlined the likely federal award coverage of farming businesses. It was stated in the submission that:

“Pursuant to advice received from our State affiliate bodies, the overall picture is that a majority of farming businesses fall under the Federal jurisdiction as opposed to the State jurisdiction.

In averaging each of the State figures, without taking into account the number of businesses in each State, the average of agricultural businesses that fall under Federal Awards is 65 per cent. In recognising that Victoria is totally under the Federal jurisdiction, the figure when discounting Victoria is 60 per cent. The two States with the highest Federal coverage after Victoria were New South Wales (75%) and Tasmania (65%).”

Further, the new provisions may not encompass those who are currently covered under State industrial award jurisdictions, as many farming businesses are not constitutional corporations.

NFF, therefore, supports not only the extension of the jurisdiction of the federal legislation as proposed in the *Termination Bill* but also the consideration of a uniform national system relating to termination of employment provisions. If successfully implemented, this could then provide the basis for broader consideration of a total uniform national industrial relations system.

4. Small Business Measures

NFF supports the series of amendments contained within the *Termination Bill* that are designed to specifically assist small business.

In respect to the measures contained within the *Termination Bill*, NFF provides comments on matters of particular interest to farming businesses:

- **Extend the qualifying period from three to six months for small business employees**

Farming small businesses face particular difficulties in respect to qualifying periods. In most instances, farm employees work with limited immediate supervision and undertake a large range of tasks for a business that is located in a geographically broad area. Under those circumstances it is difficult for employers to assess the suitability of a new employee within three months.

The extension of the 3-month period to 6 months provides the ability of the employer to determine whether the employee is appropriate for the farming business without placing pressure upon the employer to make a decision within a limited timeframe. If an employer was unsure as to the suitability of an employee it is more likely that the employee would be dismissed simply because the employer was concerned with the completion of the automatic qualifying period as opposed to going through the process of discussion to determine whether the parties agree to an extension of the qualifying period. This is particularly prevalent for small business operators without human resource specialisation.

- **Permit the dismissal, without hearing, of applications made against a small business on the ground that the application is beyond jurisdiction or because the application is frivolous, vexatious or lacking in substance.**

All farming businesses face a series of problems associated with remoteness. One of the more common complaints from farmers is the requirement to attend Commission hearings regardless of the fact that a case may be beyond jurisdiction, or because the application is frivolous, vexatious or lacking in substance. Not only does a farmer lose a couple of days work but they also have to pay for the cost of travel associated with the appearance. If they are unable to attend personally, the farmer is then responsible for the costs associated in organising an advocate to attend on their behalf. The ability to dismiss a matter without hearing on certain grounds is of particular interest to NFF due to the costs associated with defending claims lacking in jurisdiction and/or substance.

- **Streamline the criteria for determining whether a termination by a small business employer was unfair.**

The proposed new subsection 170CG(3A) virtually replicates the current provisions required to be considered by the Commission in determining whether a termination was harsh, unjust or unreasonable with the exception of one vital provision, that is the current 170CG(3)(c) “*any other matters that the Commission considers relevant*”. NFF submits that the limitation of the proposed new subsection for small business only provides greater certainty for small business in considering the procedures required to dismiss an employee and the defence of any claim that may be lodged arising from a termination.

- **Halve the maximum compensation payable to employees of small business to 3 months remuneration**

NFF submits that small businesses are particularly affected by cost impacts, to the extent that any additional cost burdens may have severe adverse consequences on a business.

Small business, in general, has a lesser ability than larger business, to accommodate the costs associated with the provision and/or payment of compensation due to the lower profitability of small business, the relative cost impact of a compensation pay out and a reduced ability to offset against capital.

The *Small Business Survey 2001*, undertaken by ABS, shows that agricultural small businesses show greater income volatility overtime than other businesses in other industries (p 79, ABS, *Small Business in Australia, Cat No 1321.0, 2001*).

The income volatility of agricultural business is particularly self evident under the current drought conditions. In a recent publication by *ABARE, Australian Commodities, vol 9, no 4, December quarter 2002* at page 567 it was reported that:

“Farm Business profit – a measure of longer term farm profitability – is projected to fall by even more than farm cash income. Farm business profit incorporates changes in the value of trading stocks held on farms. ... Farm business profits on broadacre farms are projected to fall from around \$51 800 in 2001-02 to a loss of around \$54,000 in 2002-03. In real terms, broadacre farm business profits are forecast to decline to around the 1982-83 drought affected outcome. Dairy farm business profits in 2002-2003 are forecast to fall by a similar amount to the falls in the broadacre sector.”

Agricultural businesses find it exceptionally difficult to set aside funds and if they do so it is to plan for the contingencies relating to drought that are to cover the basic necessities. As a result, the inability to fund

for potential compensation payments would increase the likelihood of business collapse. The negative employment impact of such collapse in areas highly dependent upon the viability of agricultural business would be particularly detrimental.

NFF, therefore, supports the amendment to halve the compensation payout as a significant contribution towards minimising the costs associated with termination provisions.

5. Measures to improve operation of unfair dismissal law

NFF supports all the measures contained within the *Termination Bill* to provide for certain improvements to the operation of the termination provisions.

The proposed amendments are consistent with the emphasis by NFF that there needs to be a reduction of the costs associated with termination provisions and also a fairer balance between the interests of the employer as well as the employee.

The amendment to limit dismissal claims where dismissal is for operational reasons [*proposed 170CG(4)*] is of particular importance to the farming sector. The dismissal of employees within the farming sector is not always due to the competence or actions of the employee but also that due to operational requirements the business no longer requires the employee. Dismissal on the basis of operational requirements of the business is linked to the seasonal nature of farming business along with the climate impacts such as drought. The amendment, therefore, provides far greater certainty for farmers wishing to dismiss due to operational requirements without the threat of a potential unfair dismissal claim.