

17 April, 2002

John Carter  
Secretary  
Senate Employment, Workplace Relations and Education Legislation Committee  
Parliament House  
**CANBERRA ACT 2600**

Dear Mr Carter

### **Submission to the Inquiry into the Workplace Relations Amendment Bills**

The National Farmers' Federation welcomes the opportunity to make a submission to the inquiry into the package of Workplace Relations Amendment Bills for 2002.

The NFF is the peak national body representing the interests of around 110 000 farming businesses, the vast majority of whom are small businesses. Both the *Workplace Relations Amendment (Fair Dismissal) Bill 2002* and *Workplace Relations Amendment (Fair Termination) Bill 2002* will therefore have an impact on a large number of farmers as well as those small businesses that service rural communities.

### **Workplace Relations Amendment (Fair Termination) Bill 2002**

The NFF believes that it is essential for the *Workplace Relations Amendment (Fair Termination) Bill 2002* to be passed.

Following the decision in *Hamzy v Tricon-International Restaurants t/as Kentucky Fried Chicken* where a challenge was made to the validity of the *Workplace Relations Regulations* in relation to casual employees, casual employees were able to bring unfair dismissal claims in the Australian Industrial Relations Commission (AIRC), unless they were subject to some other exclusion.

The proposals contained in the *Workplace Relations Amendment (Fair Termination) Bill 2002* will cure the defect pointed out by the Federal Court by limiting the exclusion to a time based criterion only. This Bill will provide that a casual is excluded from the unfair termination provisions if the casual employee has worked for his or her employer for less than twelve months.

NFF believes that the exclusion of casual employees in this manner is essential for the efficient operation of agriculture. It is also essential that the short period not be reduced to anything under the less than twelve months as proposed in the Bill.

NFF wishes the Committee to note that the Australian Democrats had previously agreed on these changes and an altered decision now can only damage agricultural interests. A number of sub-sectors of agriculture employ a large number of casual, itinerant workers. These workers often work beyond three months (the new statutory probationary period set out in the Bill) and the Bill deals well with the problems that would be caused if the unfair dismissal laws applied.

The harvesting season for horticultural produce, for example, can be highly variable. The cropping, picking and packing of fresh tomatoes epitomise this variability.

In the Goulburn Valley, Victoria, picking generally begins between mid December and late December. The crop is picked until approximately the end of April. In the season 2000 to 2001, picking commenced on 17 December 2000 and finished on 16 May 2001. This period is obviously longer than the pro forma probationary periods referred to above.

The principal factor determining the length of the season is the weather. If the weather is mild then the crop commencement is later but will last longer. If the weather is hot picking takes place earlier, and if the weather remains hot the season is shorter. However, generally the weather varies, so when it is very hot tomatoes ripen more quickly and must be picked, but the weather may change and the ripening will slow. The season also depends on how many times the plants are picked over. In a good season a single plant may continue to produce for a long period enabling more pickings, with the opposite if the season is poor. Rain interrupts picking, causing periods when tomatoes are not picked for days because wet fruit rots very easily.

According to information from members, pickers will frequently stay with the industry, indeed one employer, for the length of the season. Generally if professional pickers are involved after picking in Victoria, they would then travel to tomato growing areas in Queensland where the season may also last for five and a half months (approximately June to November).

The workers that are engaged for the season are itinerant, casual employees paid, in the main, as piece workers i.e. they are paid a fixed sum per bin or bucket picked. There should be no consequences for growers in disengaging these casual workers when the season ends as the essential characteristic of this work is seasonal. The *Workplace Relations Amendment (Fair Termination) Bill 2002* ensures this to be the case. In the absence of provisions that protect employers, the worker could take action for unfair dismissal under the *Workplace Relations Act 1996*.

Further, the impositions upon an employer to undertake the time consuming process of procedural fairness simply because the season's work has been completed is onerous and unnecessary.

In addition, there are a number of enterprises which engage casual employees for packing work that may extend for nine to ten months. The reason for this length of time is that the

packing is often shared amongst a number of growers and the fruit or vegetables are packed from cool storage facilities.

Agricultural enterprises also rely upon casual employees to assist with harvesting and as a supplement to a generally very small permanent work force. Efficiencies in agriculture have traditionally arisen from the displacement of labour with machinery, reflected in the large sugar and grape harvesting machinery that has replaced a large number of cutters and pickers respectively. There is, however, a trend to an increase in employment in horticulture with that sector increasing its work force by 20% in the 4 years ending June 2000. This reflects growth in the industry and contrasts markedly with traditional farming enterprises, such as livestock, which showed a marked decline in employment, a decline of 33% over the period just noted. These changes in employment have not occurred at the whim of farmers, but have been forced upon them by the pressures of the world market for agricultural products. Most farm products are faced with declining prices over the longer term.

In industries where there has been an economic requirement to lower costs, this has forced many enterprises to employ only casual employees. Capital deepening, with large investment in machinery, has accentuated this trend. There has also been large increases in labour costs; according to ABARE, farm labour costs are forecast to increase by \$838m between 2000-01 and 2002-03, by far the largest dollar increase of any farm cost<sup>1</sup>. Farms should not be further discouraged from employing workers by the need to comply with the unfair dismissal laws for short term casuals.

The disengagement of casual workers is not a reflection on their competence or efficiency. Rather it is a necessary characteristic of seasonal work. It has been argued that a shorter timeframe should provide employers with sufficient time to determine whether an employee is worth retaining over the longer term. While this argument may apply for businesses where the need for labour is constant over the year, it clearly does not apply to seasonal businesses. At the end of the farming season, it is irrelevant whether the seasonal workers are worth keeping: there simply is no work to employ seasonal labourers after the season ends.

The proposals contained in the *Workplace Relations Amendment (Fair Termination) Bill 2002* are realistic and sensible. They permit the engagement and disengagement of casual employees without the need to comply with an overly bureaucratic regime for those who engage seasonal and other casual workers.

### **Workplace Relations Amendment (Fair Dismissal) Bill 2002**

The NFF fully supports the exemption for small business from the *Workplace Relations Act 1996* at the proposed level of fewer than 20 employees. Farmers perceive these laws as problematic and this perception manifests itself in farmers deciding not to employ workers on a permanent basis.

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1. Source: Australian Commodities vol 9 no1, p255

As a second preference the NFF would support an exemption for small business at a lesser level of 15, 10 or 5 employees, in declining order of preference.

While NFF's position is to support an exemption for small business, where this was not achieved, the NFF would seek changes to procedural fairness that suit small business. These changes would include reducing the prior written warnings from three to one, and only for certain conduct such as downloading pornography, lesser standards of procedural fairness, or lesser standards of proof. This, perhaps, could be achieved by way of deeming a serious misconduct. The procedural fairness element could also be dealt with in a similar way by deeming procedural fairness to have occurred where one prior written warning had been issued.

NFF would be happy to elaborate upon the matters set out in this submission. If you require any further information, please contact Denita Harris, Industrial Relations Advocate and Policy Manager or Su McCluskey, General Manager, Policy on 6273 3855.

**ANNA CRONIN**  
**Chief Executive Officer**