

**NFF SUBMISSIONS TO THE SENATE COMMITTEE INQUIRY INTO
 PROVISIONS OF THE INDEPENDENT CONTRACTORS BILL 2006 AND
 WORKPLACE RELATIONS LEGISLATION AMENDMENT
 (INDEPENDENT CONTRACTORS) BILL 2006**



Introduction

1. The National Farmers’ Federation (“the NFF”) considers that independent contracting and labour hire represents a significant proportion of working arrangements in the agricultural industry, due to its seasonal nature, and its effectiveness in addressing labour shortage issues, among other things.
2. The NFF has made previous submissions to Parliament and the Federal Government on independent contracting. The NFF has consistently supported the introduction of such law to clarify the distinction between independent contractors and employment relationships.
3. For background detail, please see the most recent NFF submission, being the submission to the Department of Employment and Workplace Relations Discussion Paper on Independent Contracting, attached and marked “1”.
4. The NFF supports the protection of the principles of freedom of contract under which independent contractors may enter into services contracts as a legitimate form of work arrangement that is primarily commercial. NFF further supports the prevention of interference in such genuine independent contracting arrangements.
5. The NFF supports provisions within the *Independent Contractors Bill 2006* (“the Bill”) for the rights, entitlements, obligations and liabilities of parties to services contracts to be governed by the terms of those contracts. In interpreting

those terms, the NFF considers it important to have regard to the rules of common law and equity, the laws of the Commonwealth and the laws of the States and Territories as they apply to the contracts. However, the NFF does not support laws that create rights, entitlements, obligations or liabilities of a nature more commonly associated with the employment relationship.

6. In particular, the NFF supports reference to the common law principles of contracts, and the definitions of independent contracting arrangements arising from common law tests.

Support for the Bill

7. In principle, the NFF supports the passing of the Bill and in part makes reference to the following provisions.
8. The NFF recognises that the bill resolves many concerns surrounding the differing legal requirements for independent contractors in the States and Territories, and represents a move towards a unitary treatment of independent contracting.
9. The NFF supports provisions within the bill that exclude State and Territory laws. Specifically, reference is made to deeming provisions that effectively render parties to a services contract to one of an employment relationship.
10. The NFF further supports provisions that prevent the imposition of rights, entitlements, obligations or liabilities in relation to matters which, in an employment relationship, would be workplace relations matters.
11. Similarly supported are provisions that prevent the whole or a part of services contracts to be void, set aside or unenforceable or to be amended or varied on the grounds of unfairness.

Issues of Concern

12. The NFF continues to seek an extension of the Bill to override deeming provisions in some state workers compensation schemes. It is the NFF's position that independent contractors are liable for their own personal insurance. It is disappointing that the Bill has specifically excluded workers compensation from its coverage.
13. The reliance on the corporations power requiring at least one party to an independent contract to be a constitutional corporation may present significant constraints on farmers to access the legislation as 90% of farmers are unincorporated, and it is envisaged that many agricultural independent contractors will also be unincorporated. It is however acknowledged that agricultural independent contractors do not have the same taxation restrictions to incorporate in comparison to farmers in changing their legal status.
14. From a policy perspective, the NFF does not agree with the exclusion of owner drivers from the operation of the Bill.

Education

15. The complexities of this legislation coupled with the perceptions held by farmers about independent contracting will require a detailed education campaign for the introduction of this Bill.
16. It was experienced by the NFF during the WorkChoices Employer Advisor Programme at virtually every one of our 175 seminars held in regional Australia, that farmers sought advice on ensuring that they had the correct independent contracting relationship in place and whether there were template contracts.

They also assumed an across the board exemption from all State laws that is distinctly not part of the Bill, such as workers compensation and occupational health and safety.

17. The NFF is concerned about the need to clarify some issues in light of the perceptions held by many farmers in terms of their obligations. Specifically, whilst the Bill excludes parties from liabilities that, in an employment relationship would be workplace relations matters, there is the perceived potential for the specific exclusion to override this generic provision. For example section 278 of the *Industrial Relations Act 1999* (Qld) in accordance with section 275 can enable a Commissioner to face the farmer to be liable for unpaid entitlements (including superannuation) owed by the independent contractor to their employees. Whilst it could be implied that this could not occur after the introduction of the Bill due to the exclusion of the deeming provisions in section 275, it is unclear whether there is still a liability on the farmer to pay the unpaid super entitlements despite already covering those expenses through the payment to the contractor.
18. The NFF is concerned about superannuation deeming provisions in Commonwealth legislation as they relate to independent contractors. It is acknowledged that the circumstances in which this will affect farmers are limited, and also that this concern is beyond the scope of the legislation. Accordingly, the NFF recognises that this issue is more appropriately raised with the Australian Taxation Office.
19. The NFF notes amendments to the *Workplace Relations Act 1996* contained in the *Workplace Relations Legislation Amendment (Independent Contractors) Bill* which provide for civil remedies for the misrepresentation of an employment

relationship or proposed employment relationship as an independent contracting arrangement. Similarly noted are provisions prohibiting dismissal of employees for the sole or dominant purpose of re-engaging them as independent contractors to perform substantially the same work. The NFF asserts the importance of education and grace periods prior to any prosecutions by the Office of Workplace Services. The NFF would not support the extension of any penalty provision that operate against the principles of freedom of contract. We believe that the proposed penalty provisions are more than adequate to cover any potential exploitation.