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*The voice of Australian farmers since 1979*



**NFF SUBMISSION TO THE INQUIRY  
INTO THE  
WORKPLACE RELATIONS AMENDMENT  
(WORK CHOICES) BILL 2005**

10 NOVEMBER 2005

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# EXECUTIVE SUMMARY

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- ◆ The National Farmers' Federation (NFF) supports the passage of the Workplace Relations Amendment (Work Choices) Bill 2005.
- ◆ The reforms will remove some of the more excessive regulation that currently exists in workplace relations law while continuing to provide strong safeguards for employees.
- ◆ NFF seeks a more flexible labour market that is based on a co-operative approach between employer and employees to the mutual benefit to both parties, without undue intervention of third parties. NFF believes the Work Choices Bill is a significant step in the right direction of meeting that objective.
- ◆ A unitary system of workplace relations is a fundamental component to effective reform to simplify the system. NFF implores the remaining State Governments to refer their industrial powers so that a true unitary system can be introduced in Australia.
- ◆ The existing multitude of systems coupled with the prescriptive requirements that determine how work is done at the workplace creates confusion for both employers and employees. Further, there is frustration that a third party can instruct how the employment relationship is structured and developed regardless of the needs of the workplace.
- ◆ The workplace relations system should be conducive to developing an employment relationship that is based on trust, mutual respect and maximisation of productivity. Instead, the current system is paternalistic and curtails an approach to workplace best practice in respect to human resource management.
- ◆ NFF commends the action taken by the Federal Government to introduce a 5-year transition period to ensure ongoing federal award coverage for a large number of Australian farmers who are not eligible to be covered by the new Work Choices system.
- ◆ NFF suggests that there is likely to be a large uptake of workplace agreements under the Work Choices system by farmers due to the streamlining of the system in terms of process and content.
- ◆ The retention of the Award system, with some modification, will still be of interest to farmers, particularly those who employ on an irregular basis where there may not be any real benefit to implement a workplace agreement.
- ◆ It will be of critical importance that a significant education campaign is undertaken to inform all Australians about the reforms. NFF will be submitting a detailed proposal in coming weeks as to how that education process could be undertaken for employers.

# TERMS OF REFERENCE

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1. The National Farmers' Federation (NFF) seeks to provide information to the Senate Employment, Workplace Relations and Education Committee inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005 (the Work Choices Bill).
2. NFF has had the opportunity to consider the announcement by the Federal Government on 9 October 2005 of the *WorkChoices* Package.
3. NFF has had the opportunity to undertake a preliminary review of the Work Choices Bill since its introduction into Parliament on 2 November 2005.
4. This submission is based on a review of the *WorkChoices* Package along with initial consideration of the Work Choices Bill. NFF requests the right to raise any new material to the Committee during the hearing process, if further information comes to our attention that is of interest to NFF that is not covered within this submission.
5. NFF is aware that this Inquiry does not cover elements of the Bill, which reflect Government Bills previously referred to, examined and reported on by the Committee. Where relevant, NFF continues to rely on submissions filed by NFF in relation to matters previously considered by the Committee.
6. As a consequence of the NFF initial consideration of the Work Choices Bill and the accompanying Explanatory Memorandum, NFF does not (at this stage) seek any amendments to the Bill.
7. NFF wishes to comment on our opinion as to the key elements of the Bill in relation to the farming sector and the NFF view as to the role of workplace relations reform for the Australian economy.

# INTRODUCTION

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8. NFF supports the passage of the Work Choices Bill.
9. As a long-standing proponent of labour market reform, NFF is of the view that the changes sought to the Australian workplace relations system, as reflected in the Work Choices Bill, are a significant step in the right direction in terms of enabling employers and employees to reach mutually acceptable work agreements by removing some of the more excessive regulation that currently exists in workplace relations laws in this country.
10. Despite the substantial changes encompassed in the Work Choices Bill to promote more flexible work arrangements to the benefit of both employers and employees, NFF believes that the system will continue to provide strong safeguards for employees.
11. The fundamental principles that underpin the basis of the support by NFF in seeking a more flexible labour market are the following:
  - ◆ Productivity growth is rewarded for effort;
  - ◆ Employers and employees can work co-operatively to the mutual benefit of both parties;
  - ◆ Employers and employees can negotiate workplace conditions at a workplace level without undue intervention of third parties;
  - ◆ Employers with good management practices are rewarded and encouraged to respond to domestic and international demands by giving them greater workplace flexibility;
  - ◆ Employees who develop skills and increase their efficiency are rewarded.
12. Flexible labour market regulation requires simplicity. In moving towards a less cumbersome and paternalistic system a unitary system of workplace relations is a fundamental component to effective reform.

# WORKPLACE SIMPLICITY

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13. The multitude of systems coupled with the prescriptive requirements that determine how work is done at the workplace creates confusion for both employer and employee and results in an excessive red tape burden on business.
14. In respect to the multitude of systems, there are many instances where farmers are faced with the requirement to work under 2 or more industrial instruments. The ability to keep track of compliance and implement variations at different times is a costly exercise. This can occur for small business employing different classes of employees or large business operating in multiple jurisdictions. Problems arising from compliance with multiple Awards and multiple jurisdictions will be effectively eliminated under the Work Choices system once fully operational.
15. Even though agricultural awards are less prescriptive than other industry sector awards (Pastoral Industry Award at 38 pages as opposed to the Hospitality Industry Award of over 75 pages let alone the Metal Industry Award), components of the agricultural Awards still contain unnecessary provisions that could be more readily dealt with at the workplace or disallow any flexibility at the workplace regardless of any agreement between the employer and the employee, even if its at the initiation of the employee.
16. Proponents of the current system may argue that the introduction of Agreements can resolve the problems that arise from Award compliance. That is, simplicity can be achieved through agreement making. However, NFF argues that when the development of Agreements is tied to a no disadvantage test against complex and extensive Awards, there is little incentive for businesses to bargain.
17. The no disadvantage test has become more cumbersome in recent years with the plethora of national test cases that are indicative of the fact that the system has become more centralised despite the introduction of Agreements. As test case standards have the status of a safety net provision meaning its introduction into all awards is effectively automatic.

# OPPORTUNITIES AT THE WORKPLACE

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18. There is frustration for employers that a third party can instruct how the employment relationship is structured and how it is to be developed along the way even without the knowledge of the employer, the employee or an understanding of the business.
19. The workplace relations system in Australia is not conducive to developing an employment relationship that should be based on trust, mutual respect and maximisation of productivity at the workplace to the financial benefit of the employer and the employee.
20. The current system of workplace regulation in Australia does not encourage small and medium business to take ownership of human resource management in their own business because they have become so used to being micro-managed by a centralised agency.
21. NFF strongly believes that the Work Choices Bill will provide the impetus of a new wave of reform that will increase productivity, provide a new positive outlook on workplace relations, will increase employment and assist with labour shortages in an environment that reflects the needs of individual employers and their employees.
22. As identified in the recent NFF Labour Shortage Action Plan, NFF believes a key benefit flowing from reform will be in the context of human resource management.
23. The workplace relations changes can provide the catalyst for small business, in particular, to reconsider their human resource systems whereby it not only improves productivity but also may assist in the resolution of labour shortages given that lack of quality human resource management has been identified as a weakness for farming businesses in attracting labour.
24. There is no doubt that there will be a range of opportunities available for workplaces once the reforms are introduced. The benefits derived from the implementation of reforms at a workplace will be dependent upon the proactive approach taken by employers as they operate in a highly competitive labour market and global economy.

# UNITARY SYSTEM & TRANSITIONAL ARRANGEMENTS

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25. NFF supports the concept of a unitary workplace system. However, the use of a variety of constitutional powers by the Federal Government, as opposed to a referral of industrial powers by the remaining State Governments, results in a limitation of the new system to achieve full unitary status. That is, certain businesses including a large number of farming businesses are not covered under the constitutional powers utilised to underpin the reforms. This was originally of significant concern to NFF as a large number of farmers operate under one of the oldest federal awards in the country, the Federal Pastoral Industry Award.
26. NFF continues to implore the remaining State Governments to follow the lead of Victoria and refer industrial powers to the Federal Government to provide one system of workplace relations regulation in Australia. The consequence of such a referral would negate the need for a large component of the consequential transitional arrangements that have been put in place by the Federal Government and would provide access to the full gambit of the reforms to all Australian businesses.
27. Under the transitional arrangements for federal award coverage, any business that is currently operating under a federal award that will not be the subject of the reforms due to constitutional limitations, will continue federal award coverage in accordance with the conciliation and arbitration power for a period of 5 years.
28. The ability to retain federal award coverage for Australia's farming business was a priority for the NFF, yet we were conscious that such retention should not adversely impact on the pursuit of reform. NFF believes the approach taken by the Federal Government was a sensible one. NFF commends the decision, in the knowledge that it has resulted in an additional layer of the system that could have been avoided had there been a referral of power.



29. The five-year transition period provides sufficient time for farmers to determine the best course of action dependent upon their individual circumstances.
30. The five-year transition period will not encompass all reforms but does include some reform concepts that will be of benefit to workplaces in the short term.
31. It is recognised that the transition period provides a different style of reform than that contained in the Work Choices system.
32. Differences include the inability of a transitional employer to access workplace agreements unless they determine to change their status to a constitutional corporation that usually occurs in the form of establishing a company structure. A change in legal status to a constitutional corporation will move the farming business from the transitional system into the Work Choices system with the full range of reforms becoming available.
33. NFF continues to work on avenues to assist farming businesses to incorporate for employment purposes if they believe that is an appropriate course of action. Such a move would need to ensure that it does not result in a detrimental impact on the benefits of not incorporating particularly in relation to tax benefits such as Farm Management Deposits. We seek the assistance of the Federal Government in relation to this matter.
34. Ultimately, the decision on what course of action to take, and when to take it, under the transitional arrangements will become more apparent to farmers as the system is implemented and education campaigns are conducted to assist in that decision making process.
35. NFF believes that the introduction of a number of transitional arrangements enables a smooth transition and does not put either the employer or employee in a position whereby an immediate decision has to be made at the commencement of the new system without taking into account the full ramifications of any decision. This is another safeguard inherent within the Work Choices Bill.

# AGREEMENT MAKING

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36. A barrier for farmers to introduce agreements at the workplace has been the complexity of the no disadvantage test coupled with the administrative burdens involved in seeking to introduce an agreement, whether the agreement was a collective or individual agreement.
37. Farmers have experienced administrative difficulties with both collective agreements and individual agreements. Collective Agreements have been seen to be difficult because of the requirement for the matter to be dealt with in the AIRC. Difficulties with Australian Workplace Agreements (AWAs) have arisen because of the length of time required between lodgement and approval. These issues have been particularly frustrating for employers of seasonal workers.
38. An analysis of the new workplace agreement provisions suggest that many of the regulatory burdens have been removed in terms of lodgement process and the fact that the Agreement will commence from the date of lodgement. This is of significant benefit to farmers who seek to introduce workplace agreements.
39. It should not be assumed that the streamlining of the workplace agreement provisions would predominantly result in a significant number of individual agreements as opposed to collective agreements. Given that agreement making in the new system, regardless of whether it is collective or individual, is based on the same foundations and the same process, it is likely, particularly on farms with a large number of employees that it will be easier to introduce collective agreements as opposed to individual agreements.
40. NFF believes the greater focus on workplace agreements will not only assist in introducing better human resource management systems but also provide an opportunity for registered organisations, whether employer or employee, to provide advice when advice is sought by the employer or employee. The provision of choice in the workplace actually improves the potential for an increase in membership of such organisations as opposed to the free rider principle that is so prevalent in a centralised system. NFF is currently identifying avenues to increase the expertise available to members due to the lack of specialised human resource management experience on farms.

# AWARDS

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41. The ability for employers and employees to remain under awards as opposed to moving to workplace agreements is maintained in the Work Choices Bill. NFF believes this is particularly important for those farmers who employ on an irregular basis, where there is no cost benefit to negotiate a workplace agreement.
42. Awards will be of a very different nature to workplace agreements because the Work Choices system breaks the nexus between Awards and Agreements. NFF strongly supports the concept of separating Agreements from Awards, as it is a vital ingredient to provide real choice at the workplace when negotiating agreements.
43. Nevertheless, there is some ongoing relationship with certain identified award conditions to be retained in a workplace agreement unless the workplace agreement explicitly specifies that an alternative approach will be taken with that Award entitlement. While NFF is of the opinion that this has created an extra level of complexity in negotiating agreements that NFF would have preferred to have been left out, it is understood that these problems should provide a safeguard for employees given it will be the first time many workplaces engage in formal workplace agreement negotiation.
44. Awards will continue to be underpinned by allowable award matters that will be slightly varied to remove some of the difficulties currently inherent and unfair in the existing system. For example, the current system allows for facilitative provisions but in practice the facilitative provisions can be overridden by the capacity of awards to only allow facilitation if a majority of employees agree, which is contrary to the premise of facilitative provisions in the first instance. The Work Choices Bill specifically excludes majority agreement in this type of award provision.
45. NFF supports the new structure of Awards as proposed in the Work Choices Bill in relation to both the Work Choices System and the Transitional Award arrangements.

# AUSTRALIAN FAIR PAY & CONDITIONS STANDARD

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46. The introduction of the Australian Fair Pay and Conditions Standard is understood to provide a guaranteed legislative minimum for the first time in the federal workplace relations system.
47. A centralised standard will always create anomalies and will benefit some, while could result in reductions for employees or increase costs for employers. Therefore, it is accepted by NFF that there will have to be trade-offs. However, impacts of change can be minimised through transition periods and preservation of existing rights where such rights are more generous than the standard.
48. For example, in relation to the introduction of a 38-hour week averaged over a period of up to 12 months in the Standard, this would impact on two agricultural awards where a 40-hour week still exists. It is welcomed by NFF that the Federal Government acknowledges the practical difficulties in changing work practices immediately, therefore, the change to 38 hours has been provided with a 3-year transition.
49. The averaging of the 38-hour guarantee over a period of up to 12-months that is contained in the Standard is of critical importance to the agriculture industry. Reflecting the seasonal nature of the industry, along with the impact of weather dependence and the need to maintain animal welfare practices, the main Federal Agricultural Awards contains an hours of work provision based on 152 hours over a four-week period. This arrangement could not have continued without significant cost impacts to the industry if the Standard had simply been a guarantee of a 38-hour week without the averaging period.
50. The removal of wage rates and casual loadings from Awards to the jurisdiction of the Australian Fair Pay Commission is supported by NFF, in that it removes the adversarial arbit style approach that now exists in the national wage cases under the jurisdiction of the AIRC. However, it is still a centralised wage fixing body that not only sets the Federal Minimum Wage but also all wage classification levels, and casual loadings based on a

macro investigation of the economy. NFF believes this is inconsistent with the concept that remuneration should be clearly linked to productivity growth at the workplace. The Fair Pay Commission structure is no different to the existing system where it is difficult to argue for specific industry outcomes as a consequence of an industry downturn such as that experienced by the agricultural industry during drought.

51. NFF will also be interested in how piece rates are set by the Australian Fair Pay Commission given that in the Federal Pastoral Award shearing piece rates are determined by a formula that is made up of a wage rate, a casual loading and a number of allowances. Under the Work Choices system the Fair Pay Commission will set the wage rate and casual loading but the allowances will remain under the jurisdiction of the AIRC. We simply highlight this as a minor issue that will need to be considered, particularly in relation to the drafting of the Regulations.
52. NFF supports the capacity of the determinations of the Australian Fair Pay Commission to be effective across the board on the same date without the need for Award variation. The costs involved for all parties in varying every award each year as a consequence of national wage cases is ridiculous. However, in determining the commencement date of the first decision, the Commission should have regard to the fact that many Awards may only have been subject to the 2005 national wage increase. Therefore, some type of averaging should be considered in determining the date rather than relying on the commencement date of the awards that are usually utilised to activate the national wage cases in the Australian Industrial Relations Commission.

# WAY FORWARD

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53. NFF is of the opinion that the workplace relations reforms contained within the Work Choices Bill are of crucial importance to the future success of Australian farmers and the Australian economy as a whole.
54. The capacity of farmers to increase employment will be based on their ability to experience productivity growth. Growth will be strongly assisted with the introduction of labour market reforms.
55. Australian farmers has been able achieve growth partially due to the range of economic reforms introduced throughout the 1980s and 1990s which has assisted the industry to operate in a highly competitive global market.
56. The ongoing capacity of farmers to remain competitive, where 70 per cent of Australian agricultural product is exported, is to continue to implement change that enables businesses to immediately respond to global market conditions. This response is currently curtained by excessive labour regulation. The last remaining big tick item of micro economic reform is labour regulation. The Work Choices Bill is the missing piece of the puzzle.
57. As with any major change, such as the introduction of GST or deregulation, reform gives the appearance of being complex and confusing, particularly to small business. Any burden of implementing the reforms in the short-term should not result in the attitude that we should not go-ahead with reform. Change is always hard to introduce but NFF believes there are major opportunities if all those involved in the workplace relations reforms take a positive approach to change.
58. The degree of the impact of the reforms on a workplace will be lessened through the effective use of transition periods, the process of rationalisation and simplification and would be even less of a impact if the State Governments referred their industrial powers.

59. It will also be of critical importance that a significant education campaign is undertaken to inform all Australians about the reforms. NFF recommends an approach where organisations can apply for funding to provide information to their relevant constituency. NFF in coming weeks will submit a proposal to the Federal Government as to how that concept may work in practice.
60. NFF commends the Work Choices Bill to the Committee.