



21 April, 2006

Mr Jonathon Curtis
Committee Secretary
Senate, Legal and Constitutional Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Curtis

Re: Inquiry into the Migration Amendment (Employer Sanctions) Bill 2006

The National Farmers' Federation (NFF) has been interested in the proposed introduction of an Employer Sanctions Bill for some considerable time.

NFF represents State Farming Organisations and Commodity Councils on national issues including immigration matters.¹

NFF opposed the original employer sanctions concept mooted in 2000 because it was structured around a strict liability provision and enabled on the spot fines. We believed that the proposed system was unfair and unwarranted.

NFF has been involved in ongoing discussions with the Minister for Immigration and Departmental officials for over 3 years on this matter. We have highlighted the NFF's concerns and have raised alternative options that could be acceptable to the NFF.

It is now our belief that the Bill, as currently drafted, removes the strict liability offence and instead requires criminal intent or criminal recklessness. In other words, the attention of the Bill is now limited to those who are deliberately employing or organising the employment of an illegal worker. As a consequence, the basis of the concern held by NFF is removed.

The requirement to prove actual intent or recklessness is understood to not create any liability on a farmer who was simply careless in their recruitment of an illegal worker. It is also understood that the term recklessness means that it would have to be proved that a farmer knew there was a substantial risk that the job applicant was an illegal worker and that under the circumstances known to the employer, it was unjustifiable for the employer to have taken that risk. Further, that where a substantial risk did arise, there would be a 48-hour grace period to conduct any checks.

¹ A full list of the NFF membership is available at www.nff.org.au.

NFF is supportive of the inclusion of those who coordinate employment of illegal workers. Evidence would suggest that in many cases, the employment of illegal workers caught on farms has actually been organised by a third party as opposed to the employing farmer who is unaware of the fact.

NFF does not oppose the passing of the Employer Sanctions Bill through Parliament. An important component of the Bill is the detailed Memorandum of Understanding that outlines the extent to which the sanctions are likely to apply to employers.

It will be vital that a comprehensive education campaign for at least 6 months is part of the introduction of the new employer sanctions regime prior to the actual commencement of the laws.

NFF is concentrating its efforts on assisting the industry to resolve labour shortages particularly for seasonal work. This includes the support of the extension of the working holidaymaker visa last year for 2 years if 3 months work is undertaken in a harvest job during the first 12-month visa and also the potential consideration of a seasonal worker visa. We also support a range of other initiatives such as increasing human resource management capacities of farmers. NFF refers the Committee to the NFF submission to the Senate Employment, Workplace Relations and Education Committee Inquiry on Pacific region seasonal contract labour² and the NFF Labour Shortage Action Plan³ for further information on the NFF approach to resolving labour shortages in agriculture.

We hope this brief submission is of assistance to the Committee. NFF representatives would be available to appear at any public hearing of the Committee, if requested.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Denita Wawn', written in a cursive style.

(MRS) DENITA WAWN
Workplace Relations Manager & Industrial Advocate

² www.nff.org.au/pages/sub/Pacific_Seasonal_Contract_Submission_2006.pdf

³ www.nff.org.au/pages/pub/LSAP%20Final.pdf