

**National
Farmers
Federation**

National Farmers' Federation submission – Response to the Review of the Closing Loopholes Acts

5 March 2026



The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade, and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

NFF Member Organisations



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NFF's key messages

- Practical compliance pathways that distinguish deliberate wrongdoing from genuine error in complex award settings (particularly horticulture and pastoral work).
- Targeted refinements to labour-hire, casual, contractor and “employee-like” frameworks so seasonal agriculture can function without continual reclassification risk.
- Clear, agriculture-relevant guidance on right to disconnect, union delegate entry/engagement, and enforcement expectations in remote workplaces.

Responses to the Terms of Reference

Whether the operation of the amendments is appropriate and effective

- NFF recognises the policy objective of strengthening compliance and worker protections. However, “appropriateness and effectiveness” should be assessed not only by the existence of new rights or penalties, but by whether the system is workable, predictable and administratively efficient for lawful employers, especially small businesses, so it supports employment and productivity, not risk-driven contraction.
- Across agriculture, the dominant operational impact has been a material increase in:
 - time spent on award interpretation, record-keeping and contract review;
 - legal uncertainty in classifying casual/contractor arrangements; and
 - exposure to high-consequence enforcement settings in industries with inherently variable hours and seasonal patterns.
- NFF submits that the Review should treat the cumulative compliance load of multiple interacting measures as a central test of effectiveness.

Criminalisation of wage theft: heightened exposure in complex award environments

- The criminalisation of intentional wage theft is one of the most significant changes for agricultural employers. The risk profile is elevated because agriculture

frequently operates under some of the most complex pay instruments (including horticulture and pastoral settings), with seasonal workforces, high visa-holder participation, and piece-rate structures increasing the probability of administrative error.

- Where payroll systems are not robust, errors that are genuinely inadvertent may be alleged to be “reckless” or intentional, exposing employers to severe consequences and encouraging overly conservative hiring practices.
- NFF notes the Government’s approach includes a small business compliance pathway via the Voluntary Small Business Wage Compliance Code, intended to provide a pathway to avoid criminal prosecution, and that the offence commenced on 1 January 2025.
- However, the practical challenge remains: small farm businesses often lack specialist payroll capability and cannot easily absorb the cost of constant professional advice.
 - The unintended consequence of this is risk aversion, reduced seasonal recruitment, and increased outsourcing (sometimes to less transparent arrangements), undermining both compliance and productivity and adding to complexity.

Regulated labour-hire (“same job, same pay”): cost shocks and administrative complexity at peak seasons

- Agriculture relies on labour-hire during harvest periods, shearing seasons and other peaks. The Fair Work Commission’s capacity to require labour-hire workers to be paid the same as directly employed workers performing equivalent duties can materially alter cost structures and contracting decisions.
- In many cases the labour-hire providers may be required to match enterprise agreement rates (where relevant), and these increased costs are likely to be passed through to farms. Employers may also need to justify fine distinctions in role design to avoid capture, increasing legal and administrative workload.
 - The unintended consequence of this is the reduced ability to respond to seasonal surges, delayed harvest operations, and downstream productivity losses (including spoilage and quality impacts).

New definitions for casuals, contractors and “employee-like” workers: reclassification risk for seasonal agriculture

- Many agricultural roles are seasonal but regular. Under tightened casual definitions and conversion pathways, farms face uncertainty in situations where work is inherently seasonal but may recur annually or follow weather patterns. Similarly, contractors such as shearers, machinery operators and fencing crews may face reclassification risk if control factors are interpreted broadly, despite long-standing industry practice.
- Additionally, gig-style labour platforms used for short-term farm work may become subject to minimum standards frameworks, adding complexity in a segment that is used precisely because it is short-duration and variable.
 - The unintended consequences in this case include increased disputes and contract churn; reluctance to engage workers for short seasonal windows; and reduced flexibility to meet time-critical tasks.

Right to disconnect: operational friction in weather- and welfare-dependent work

- Farms frequently require after-hours contact for genuine operational reasons (animal welfare emergencies, irrigation breakdowns, biosecurity incidents, weather windows). While the right to disconnect is directed at unreasonable contact, uncertainty about what is “reasonable” in agriculture can drive excessive formalisation and rostering changes. A new test, perhaps a derivative of the reasonable person test used by the courts is needed.
 - The unintended consequence of this is increased compliance paperwork and potential delays in response to time-critical incidents unless sector-relevant guidance is provided.

Expanded union delegate rights: new process burdens in low-density union environments

- Agriculture has historically had lower union activity, but expanded delegate rights (including workplace engagement and training implications) may increase procedural requirements for small employers that do not have HR teams.
 - The unintended consequence is the disputes about access/process rather than substantive issues, particularly where farms must manage WHS and biosecurity controls for site access.

Stronger enforcement powers and penalties: audit pressure and disproportionate impacts

- Agriculture expects higher scrutiny where migrant labour is involved, and penalties for breaches (including record-keeping) have increased. The sector also has common ancillary arrangements (accommodation, transport, deductions) which create additional compliance surfaces.
 - The unintended consequence is the high compliance spend relative to business size, and deterrence of lawful participation in seasonal labour pathways.

NFF recommendations

- Wage theft: strengthen “compliance-first” safe harbours in complex award settings
 - Expand practical, plain-English guidance tailored to horticulture/pastoral employers, including worked examples for piece rates, loadings, averaging, and time-keeping expectations.
 - Clarify that genuine, promptly remediated errors in complex award interpretation should not be treated as indicative of criminal intent.
 - Ensure the small business compliance pathway is accessible (templates, checklists, model payroll controls) and promoted through trusted industry channels.
 - Simplify and technically improve drafting and guidance so entitlements are easier to understand and apply in practice.

- Labour-hire orders: provide seasonal agriculture clarity and reduce disputes
 - Provide clearer comparators and “equivalent duties” tests suited to short-duration peak work.
 - Consider an agriculture-specific pathway that preserves worker protections while recognising the operational necessity of short, surge labour engagements (e.g., streamlined processes and clearer exemptions where no enterprise agreement comparator exists).
- Casual and conversion rules: recognise inherently seasonal work patterns
 - Clarify that roles which are genuinely seasonal (despite being regular across seasons) can remain casual where the nature of work is discontinuous and contingent on seasonal conditions.
 - Provide guidance to avoid a “one size fits all” conversion expectation that does not reflect agriculture’s production cycles.
- Contractor classification: protect genuine contracting without weakening worker safeguards
 - Provide clearer indicators and model contracting clauses for common agricultural contractor types (shearing teams, machinery contractors, fencing), reducing reclassification disputes where commercial contracting is legitimate.
 - Ensure sham contracting enforcement targets deliberate avoidance, not ordinary farm-contractor engagement where workers operate independent businesses.
- Right to disconnect: publish sector-relevant guidance for “reasonable contact”
 - Establish explicit examples for agriculture of reasonable contact (animal welfare emergencies, irrigation failures, biosecurity incidents, weather-critical windows).
 - Encourage practical on-call arrangements (with appropriate compensation) rather than purely restrictive interpretations.
- Delegate rights and right of entry: balance access with WHS and biosecurity
 - Ensure guidance makes clear that WHS, biosecurity and induction requirements can be applied consistently to all site entrants, including in remote workplaces, without being treated as obstructive.
- Enforcement approach: education-first for small business, risk-based auditing
 - Prioritise education and remediation pathways for first-time or administrative breaches in complex award contexts, with escalation for repeat or deliberate non-compliance.
 - Improve coordination across agencies to avoid duplicative audits and inconsistent guidance for employers engaging migrant labour.



National
Farmers
Federation

Leading
Australian
Agriculture

NFF House
14-16 Brisbane Avenue
Barton ACT 2600

Locked Bag 9
Kingston ACT 2604

(02) 6269 5666
reception@nff.org.au
nff.org.au
