

FARM BUSINESS FACT SHEET

LEGAL COMPLIANCE: Employer responsibilities and Buying, selling or leasing personal property

KEY POINTS

- Know the rules: identify relevant legislation
- Adopt best practice: plan to get it right the first time
- Get some perspective: seek expert and independent advice
- Be open and resourceful: there is plenty of expert help available



PHOTO: AUSTOCK

INTRODUCTION

Knowing how the law applies to all aspects of a farm business and complying with legislation is one way to significantly reduce risk. This fact sheet explores two priority business areas where proactive legal compliance can result in significant risk reduction for farm business operators. The two areas explored here are:

1. employer responsibilities; and
2. buying, selling or leasing personal property.

The fact sheet features real-life examples, demonstrating the potential impact of getting it wrong, as well as checklists of actions to help achieve compliance.

Employing workers should be one of the least difficult jobs in a farm enterprise because the process is governed by either state and Commonwealth laws, depending on the business structure.

Once the appropriate award has been identified, it is just a matter of following the rules.

This doesn't mean challenges won't present themselves – and they tend to occur at the busiest times of the year – but if the correct legal framework is in place from the start, a fair resolution is possible. Putting together an employment contract that provides clarity around the work agreement and clearly sets out the duties the employee will be required to do is critical for achieving this.

A business should also have a set of policies and procedures that give employees clear guidance on how they are expected to conduct themselves

in the workplace, so there can be no confusion if an issue arises, as can often happen.

Non-compliance with workplace laws is a significant financial risk for farming operations and dismissing an employee when in breach could leave an employer open to a lawsuit.

Compliance with workplace laws should be just another part of managing risk in a business, alongside occupational health and safety. Just as there are policies and procedures to ensure a safe workplace is provided, there are policies and procedures for employing staff.

There is plenty of assistance available to ensure compliance, from drafting work contracts and managing the payroll, to setting up workplace systems and policies. Professional organisations such as state farmer associations can be good contact points for information, as well

FOR EXAMPLE

An employee gets on the two-way radio, swearing and ranting about being overworked and underpaid. His employer sees this as a continuation of several issues that have emerged over the past year and hands him a letter that night terminating his employment immediately, citing swearing on the two-way radio and unsatisfactory performance as the reasons. Soon after, he hears from the Fair Work Commission following a complaint from the worker claiming his dismissal was unfair. The employer contacts his lawyer and it is determined he is in breach of the Fair Work Act – the business did not have a set of workplace policies that stipulate no swearing, the employee was given no guidance on appropriate use of the two-way radio, he received no formal warnings, and was given no opportunity of redress or to have a representative in place at disciplinary meetings. During its investigation, the commission also discovers the employee was being underpaid due to the employer not meeting the technical definition of providing ‘keep’ in lieu of being paid at the award rate, and the employer’s record-keeping did not comply with legislative requirements.

THE OUTCOME

On the advice of his lawyer, the employer reached a settlement with the employee in the form of a payout that contained a sum as reimbursement for underpaid wages and an ex-gratia payment for him to agree to drop his complaint.

as state and Commonwealth websites and hotlines.

Employing people should be a satisfying and rewarding experience

– being aware of and abiding by employment laws will enhance the positive outcomes for you, your employees and your business.

CHECKLIST

- Look at your business structure to work out which set of rules – Commonwealth or state – need to be followed when employing staff.
- Use detailed employment contracts with a position description that states set hours of work and how overtime and loadings will be managed. Also provide a copy of the workplace code of conduct and a copy of policies and procedures.
- National Employment Standards must be adhered to under law, with a copy provided to every employee when they start work.
- Address concerns with employees when issues arise.
- Detail everything in writing and provide the employee with a record of the discussion.
- Provide the employee with reasonable opportunity to address concerns.
- As an employer, consider whether your actions with employees are fair and reasonable.
- Employment records must be kept for seven years, with serious fines if found to be in breach.

USEFUL RESOURCES

Fair Work Ombudsman: Contact to find the right award, calculate entitlements, and seek information on record-keeping and advice on employment issues. www.fairwork.gov.au or phone 13 13 94

Award pay rates can be checked at:
<https://calculate.fairwork.gov.au/findyouraward>

National Employment Standards:
www.fairwork.gov.au/employee-entitlements/national-employment-standards

Fair Work Commission: www.fwc.gov.au

Pastoral Award – Commonwealth:
<http://awardviewer.fwo.gov.au/award/show/MA000035>

GRDC booklet – A Guide to Farm Labour: <https://grdc.com.au/resources-and-publications/all-publications/publications/2015/12/aguidetofarmlabour>

GRDC FACT SHEETS

Filling the farm labour gap: www.grdc.com.au/GRDC-FS-FarmLabourGap

Are you a good labour manager?
www.grdc.com.au/GRDC-FS-GoodLabourManager

Recruiting and inducting new employees:
www.grdc.com.au/GRDC-FS-FarmLabour-Recruiting

Improving time management and labour management:
www.grdc.com.au/GRDC-FS-FarmLabour-TimeManagement

Managing people in the farm business – being an effective leader:
www.grdc.com.au/GRDC-FS-ManagingPeople

Buying, selling or leasing personal property

The Personal Property Securities Register (PPSR) is a national online database of security interests in personal property managed by the Australian Government.

It is a valuable tool to reduce risk when goods or items leave an owner's possession, but they wish to retain title until a debt has been acquitted. By registering a security interest, a creditor can reclaim that property if the debtor defaults.

The register can also protect potential buyers from purchasing property that has debt attached to it – but only if they search the register before making the purchase.

Use the Personal Property Securities Register when:

- selling, hiring, renting or leasing on terms (not related to land or buildings);
- buying or selling second-hand goods; and
- raising finance using stock or other personal property as collateral.

The register should be used when selling crops, plant, equipment or

livestock in situations where the goods are handed over before being fully paid for, such as vendor finance agreements. It allows for the seller to retain the ownership title until the transaction is complete. Should issues arise, having a security interest registered helps in the recovery of the debt and lessens the risk of losing the goods if the customer does not pay or becomes insolvent.

Even if a contract of sale states the seller retains title, that document will not provide protection if a buyer has taken possession of goods and then disappears or goes bankrupt. The Australian Personal Property Securities Act 2009 recognises this and provides a further mechanism to safeguard title security through the PPSR. It is therefore critical that security interests be registered for all major transactions of property, with the exception land or buildings.

Once the interest is registered it will take precedent over any subsequent attempts to register interest. This has the effect of taking the seller from being an

FOR EXAMPLE

A farmer provided vendor finance for the sale of a harvester to a neighbour. As part of the sale process, he registered his interest on the PPSR. Unbeknownst to the seller, the neighbour's business went into administration six months later and the harvester was sold on to a third party who did not search the register for any interest linked to it before buying.

When the third party tried to use the harvester as security for a loan, a bank search on its registration revealed it was encumbered to the original seller. As the registered owner, the seller was entitled to recover the harvester. Legal representatives demanded the third party return it or pay the \$320,000 balance still owing.

Unfortunately for the third party, they lost the harvester and the money they had paid for it – both of which could have been avoided with a search of the PPSR at the time of purchase.

PHOTO: PAUL JONES



SUMMARY: What is the cost? (Full details at www.ppsr.gov.au/fees)

| Activity | Online service | Contact centre |
|---|----------------|----------------|
| Search the PPSR | \$2 | \$7 |
| Register a financing statement where the duration is seven years or less | \$6 | n/a |
| Register a financing statement where the duration is more than seven years but less than or equal to 25 years | \$25 | n/a |
| Register a financing statement that has no stated end time | \$115 | n/a |
| Discharge a financing statement | no fee | n/a |

CONCLUSION

Legal compliance for farm businesses should not be daunting if basic principles are applied: be proactive, know the rules and follow them.

Aim to get it right from the start by seeking expert and independent advice before making major decisions and use the many resources available to manage risk.

unsecured creditor to a secured creditor. The registered interest has priority over all non-registered parties and future interest holders are deemed to know about it, regardless of whether they have checked the register or not. Whoever registers first gains the advantage of being secured.

Selling valuable goods on consignment is another area where interest should be registered as part of risk management. With the emergence of smaller grain traders, there is an opportunity that doesn't exist with bulk handlers to negotiate retention of a security interest over your grain until it has been paid for.

CHECKLIST

- ☑ **If selling:** The security interest should be registered with the PPSR in addition to being noted in the sale contract. Registrations can be made before an agreement is signed.
- ☑ **If buying:** Search the PPSR for prior interest to see if money is still owing before signing the sale contract.
- ☑ **Negotiate:** If selling grain, ask if the trader will amend standard terms and conditions to allow for security interest to be registered until payment.
- ☑ **Keep an eye on the time:** Some registrations expire after seven years – run a free report to see if any need to be renewed.

USEFUL RESOURCES

General information:

www.ppsr.gov.au

GRDC Fact Sheet – Personal Property Security Register – assisting growers to manage credit risk: <https://grdc.com.au/FS-PPSR>

Costs: www.ppsr.gov.au/fees

To register: www.ppsr.gov.au/register-security-interests

To search: <https://transact.ppsr.gov.au/ppsr/SearchLanding>

GRDC PROJECT CODE

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MORE INFORMATION

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