

4 yearly review of modern awards –Pastoral Award

Matter No. AM2014/239

NATIONAL FARMERS’ FEDERATION

**FURTHER SUBMISSIONS ON EXPOSURE DRAFT –
PASTORAL AWARD 2016**

Date: 28 September 2016

1. The National Farmers’ Federation (NFF) is the peak industry body representing Australian farmers and agribusiness across the supply chain, including all of Australia’s major agricultural commodity groups.
2. This submission responds to Directions issued by the Commission on 26 August 2016 and outlines our comments on the revised Exposure Draft and Summary of Submissions dated 17 August 2016.

Items agreed or not opposed

3. In relation to claims made by the NFF and listed as ‘agreed or not opposed’ in the Summary of Submissions, we understand this to be an accurate reflection of progress to date in discussion over the terms of the Exposure Draft.
4. The NFF notes that item 110 is agreed and that the Exposure Draft will be amended to replace the current rates with 2016 rates.

Items determined by another full bench or withdrawn

5. We note the facilitative provision in the revised exposure draft does not reflect the NFF’s submissions of 16 June 2016 at Attachment A where a number of additional terms were proposed for inclusion. This proposed clause is re-attached to this submission at Attachment A.

Items not agreed

6. We confirm our approach in relation to the following NFF claims:

Item	Exposure Draft Clause	Status
10	6.1	Pursuing. The NFF proposes an alternate form of words: 6.1 Except in the case of pieceworkers, employees under this award will be employed in one of the following categories: (a) full-time; (b) part-time’ or

		(c) casual.
11	6.3(a)	Pursuing
18	6.6(a)	Pursuing
30	10.2(d)	Pursuing
41	24.2	Pursuing
42	24.3	Pursuing
45	26.3	Pursuing
49	27.2; 32.2; 33.1; 38.1; Schedules B.2.2; B.4.1; B.4.2 to B.4.5; B.5.2 and B.6.1	Pursuing
51	29.2	Pursuing
55	31.1	Pursuing
58	32 and 33	Pursuing
59	32.2	Pursuing
60	32.3	Withdrawn
62	32.8	Pursuing
65	34	Pursuing
66	36.2	Pursuing
84	41	Pursuing. See further comments below.
86	42.3(a)(ii)	Parties have reached agreement. See agreed term below.
95	A .1.2	Pursuing
106	B.6.2	Pursuing.
107	B.6.3	Pursuing.
108	B.7	Pursuing. This clause is now B.8 in the updated Exposure Draft.
109	B.7.2	Pursuing This clause is now B.8 in the updated Exposure Draft.
111	C.2.2	Pursuing. The NFF could accept the term 'All Groups CPI' rather than 'All Groups' as this reflects the full terminology used in the index.
116	G	Pursuing.

7. All other items listed as 'not agreed' in the Summary of Submissions continue to remain so to the extent that these claims are pursued by the party making the claim.

8. The NFF contends that the following clauses in the Exposure Draft have a different legal effect to the corresponding clause in the Pastoral Award.

Item	<i>Pastoral Award 2010</i>	Exposure Draft	Effect of change
84	<p>46 Special allowances (other than Woolclassers Special allowances (other than Woolclassers and Shearing shed experts))</p> <p>46.1 Allowance where sleeping quarters are not provided</p> <p>Where the employee does not reside during a shearing (or crutching) at the employee’s home or usual place of residence and the employee is forced to obtain and pay for sleeping quarters away from the employer’s premises because the employer is unable to provide sleeping quarters at the premises for the employee, the employer will:</p> <p>(a) arrange for sleeping quarters for the employee to be supplied elsewhere at the employer’s expense; or</p> <p>(b) pay to the employee an allowance of 259.4% of the standard rate per night for each night during the employee’s employment that the employee is so forced to obtain and pay for sleeping quarters; and</p> <p>(c) where the distance is one kilometre or more walking distance between the employee’s sleeping quarters and the shed, provide or pay for the transport of the employee between the sleeping quarters and the shed.</p>	<p>41. Special allowances (other than Woolclassers and Shearing shed experts)</p> <p>41.1 Allowance where sleeping quarters are not provided</p> <p>If the employee does not reside at their usual place of residence and is forced to obtain and pay for sleeping quarters away from the employer’s premises because the employer is unable to provide sleeping quarters at the premises for the employee during a shearing or crutching, the employer will:</p> <p>(a) arrange for sleeping quarters for the employee to be supplied elsewhere at the employer’s expense; or</p> <p>(b) pay to the employee an allowance of \$46.15 per night during the employee’s employment that the employee is forced to obtain and pay for sleeping quarters; and</p> <p>(c) provide or pay for the transport of the employee between the sleeping quarters and the shed where the distance is one kilometre or more walking distance between the employee’s sleeping quarters and the shed.</p>	<p>The legal dictionary defines residence as “personal presence at some place of abode” and indicates that “although the domicile and residence of a person are usually in the same place, and the two terms are frequently used as if they have the same meaning, domicile means living in that locality with the intent to make it a fixed and permanent home. Residence merely requires bodily presence as an inhabitant in a given place.”</p> <p>This definition shows that, while a person’s home and usual place of residence will often mean the same thing, this is not necessarily the case. Shearing is a form of employment that is traditionally associated with an expeditionary lifestyle where employees move around throughout the year for work and may establish a usual place of residence that is away from their home. The Exposure Draft clause would not apply to a circumstance where an employee returns to their home for work, which is not their usual place of residence at that time.</p> <p>To avoid this becoming a contested issue in the future, the term ‘home’ should be</p>

			reinserted to the Exposure Draft.
86	<p>47.3 Allowance for delays for Woolclassers paid at piecework rate</p> <p>(a) ...</p> <p>... unless the failure to start is caused by wet weather or other unforeseen causes such as fire, flood, earthquake or any other act of God.</p> <p><i>Note: Abbreviated for ease of reading</i></p>	<p>42.3 Allowance for delays for Woolclassers paid at piecework rate</p> <p>(a) ...</p> <p>(ii) the failure to start is not caused by wet weather or other unforeseen natural causes such as fire, flood, or earthquake.</p> <p><i>Note: Abbreviated for ease of reading</i></p>	<p>The Commission has expressed a preference not to use the phrase ‘act of God’., The NFF proposes the following alternative form of words to ensure that fires that are deliberately lit continue to be covered by the revised clause. It is our understanding that the AWU has agreed to this form of words.</p> <p>42.3 Allowance for delays for Woolclassers paid at piecework rate</p> <p>(a) ...</p> <p>(ii) the failure to start is not caused by wet weather or other unforeseen natural causes such as fire, flood, or earthquake.</p> <p><i>Note: Abbreviated for ease of reading</i></p>
95	<p>45.1(h) If found employee—the rates prescribed above less the amount of \$29.85, which is arrived at by adding the Shearing cook’s daily rate to one fifth of the Shearers’ ration component.</p>	<p>A.1.2 ‘If found’ rates are calculated by deducting \$29.20 from the ‘not found’ rate. This amount is arrived at by adding the Shearing cook’s daily rate to one fifth of the Shearers’ ration component. The Shearing cook’s daily rate is calculated in accordance with clause A.5.</p>	<p>Schedule A.1.2 should clarify that the deduction is ‘per day’. The daily ‘found’ deduction should be \$29.85. Clause 40.3(d) should also be amended in the same way, in relation to crutching. A further identical provision should be inserted above proposed clause 40.3 in relation to shearing (see current clause 45.1(h) of the Pastoral Award).</p>

Other matters

- In response to paragraph [5] and [6] of the Statement and Directions, 26 August 2016, the NFF confirms that the following tasks identified in paragraph 5 are required:

Task	Whether still required?
Prepare a document comparing the current coverage clause with the coverage clauses in the other agricultural awards and identify any differences.	The NFF supports the clause proposed in our correspondence dated 8 July 2016 and subsequently incorporated into the revised Exposure Draft. The NFF supports the preparation of this document if the other parties consider it necessary.
Prepare a document identifying all inconsistencies throughout the Pastoral award in relation to the General Employment Conditions.	No
Prepare a short paper summarizing the parties respective positions in relation to items 30 and 62 of the revised summary of submissions and provide additional background information on the history of the position if available.	Yes
Research and publish findings on the relevant award history of clause 14.4(a)(i) of the revised Exposure Draft (that is, clause 23.4 of the Pastoral Award).	Yes

10. We note that the learner shearer provision at clause 39.5 of the Exposure Draft is subject to proceedings and the term should reflect the outcome of these proceedings.¹
11. Finally, we note that the use of the term ‘Shearing shed’ has been amended to lower case in some clauses, and have identified other clauses where this term remains in upper case, for example in the definition of expeditionary employee at Schedule G. The term should be consistent throughout the award.

Sarah McKinnon
General Manager, Workplace Relations and Legal Affairs
28 September 2016

¹ [2016] FWCFB 4393.

ATTACHMENT A

5 Facilitative Provisions

5.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.

5.2 Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
6.4(d)	<i>Part-time employment</i>	<i>An individual</i>
6.5(e)	<i>Casual employees</i>	<i>An individual</i>
7.1(b)	Meal break	An individual
7.2(b)	Rest break	An individual
14.2	Annual leave—conversion to hourly entitlement	The majority of employees
14.6	Annual leave—Paid leave in advance of accrued entitlement	An individual
18.2	Substitution of certain public holidays	An individual or the majority of employees
30.3; 30.5;	Spread of ordinary hours	<i>An individual; a majority</i>
31.2	Ordinary hours and roster cycles—shiftworkers	The majority of employees
31.4	Shiftwork—variation by agreement	The majority of employees
34.3	Payment for public holidays	The majority of employees
39.8	<i>Shearing shed expert level 1</i>	<i>An individual</i>
40.9(d)(iv)	<i>Woolclassers and Shearing shed experts</i>	<i>An individual</i>
42.1(e)	<i>Fares and travelling allowances for expeditionary employees</i>	<i>An individual</i>
43.2(a)	Hours of work for Shearers and Crutchers	The majority of employees
43.4(a)(ii)	<i>Special conditions regarding the hours of work of Shearers and Crutchers</i>	<i>An individual</i>