

**4 yearly review of modern awards
Award stage – Horticulture Award 2010
Matter No. AM2016/25**

SUBMISSION

NATIONAL FARMERS' FEDERATION

Date: 19 December 2016

Introduction

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. On 12 September 2016, the Fair Work Commission (**Commission**) filed Directions instructing proponents of variations to the *Horticulture Award 2010* (**Horticulture Award**) to file comprehensive written submissions and any evidence upon which they seek to rely by close of business on 19 December 2016.
3. This submission responds to those Directions. It supports the NFF proposal to vary the coverage terms of the Horticulture Award so that for employers operating in the horticulture industry, coverage is not limited by the particular land use of each property on which the employer conducts its horticultural business.
4. The NFF's proposed variation would achieve this outcome by:
 - a. inserting a new definition of 'enterprise', to reflect that term as it is defined in section 12 of the FW Act, and including a joint venture or common enterprise, related bodies corporate and associated entities;
 - b. inserting a new definition of 'horticultural enterprise', meaning an enterprise which as an important part of its enterprise engages in the raising of horticultural crops; and
 - c. replacing the current definition of 'horticulture industry' with the following definition:
 - (a) The sowing, planting, raising, cultivation, harvesting, picking, washing, packing, storing, grading, forwarding or treating of horticultural crops in connection with a horticultural enterprise; or

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(b) clearing, fencing, trenching, draining or otherwise preparing or treating land or property in connection with the activities listed at 4.2(a).

5. The proposed variation would allow the Horticulture Award to cover the full range of horticultural businesses.

The relevant provisions

6. Section 143 of the *Fair Work Act 2009* (**FW Act**) provides that modern awards must include terms setting out the employers, employees, organisations and outworker entities that are covered by the award (**coverage terms**).
7. Under section 156 of the FW Act, the Commission must conduct a 4 yearly review of modern awards. The modern awards objective applies to the review.¹
8. Section 134 of the FW Act contains the modern awards objective. Under section 134, modern awards must provide a ‘fair and relevant minimum safety net of terms and conditions’ of employment, taking into account criteria including:
 - a. the need to promote flexible modern work practices and the efficient and productive performance of work (subsection 134(1)(d));
 - b. the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden (subsection 134(1)(f));
 - c. the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards (subsection 134(1)(g)); and
 - d. the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (subsection 134(1)(h)).
9. Employers are covered by a modern award if it is expressed to cover them (section 48 of the FW Act). While some awards are occupation-based, most modern awards are expressed to cover employers in a particular industry or group of industries.
10. An employer can be covered by more than one modern award. In that case, employees are “covered by the award classification that is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work” (see for example, clause 4.9 of the Horticulture Award).
11. Clause 4 of the Horticulture Award sets out who the award covers:
 - a. an employer is covered if they are in the ‘horticulture industry’.

¹ [2014] FWC 1788 at paragraph [60]

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- b. an employee is covered if their employer is in the ‘horticulture industry’ and the employee falls within one of the classifications in the award.
- c. if an employer or employee is covered by the Horticulture Award, the award operates to the exclusion of any other modern award.

12. Clause 4.3 of the Horticulture Award defines the term ‘horticulture industry’:

“**Horticulture industry** means:

- (a) agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivation, harvesting, picking, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations; or
- (b) clearing, fencing, trenching, draining or otherwise preparing or treating land for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables.”

Award modernisation

13. Prior to award modernisation, the horticulture industry was covered by one federal award and a number of State ‘notional agreements preserving State awards’:

- a. Horticulture Industry (AWU) Award 2000 (Federal);
- b. Horticultural Industry (State) Award (NSW);
- c. Mushroom Industry Employees (State) Award (NSW);
- d. Fruit and Vegetable Growing Industry Award - State 2002 (QLD);
- e. the Dried Vine Fruits Industry Award, 1951 (WA);
- f. the Fruit Growing and Fruit Packing Industry Award (WA);
- g. Farming and Fruit Growing Award (TAS).

14. A comparison table of the coverage terms of each award is at **Attachment A**.

15. The federal award applied by both respondent and common rule in Victoria, and covered employers and employees in the Australian “fruit and vegetable growing industry” as well as value added processing of fresh and dried fruits in certain States. It was not limited in scope to ‘on farm’ activities. A similar approach was taken in Queensland and Western Australia.

16. In New South Wales, the award applied to employees employed in classifications “upon farms, orchards, agricultural holdings, flower or vegetable market gardens”. These terms were not defined and it does not appear that they were the subject of administrative or judicial consideration prior to 2010.

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17. As a result of award modernisation, the various horticultural awards were collapsed into a single award covering all employers and their employees in the ‘horticulture industry’ in Australia.
18. Separate awards were established for the food, beverage and tobacco manufacturing industry and the storage services and wholesale industry. A comparison table of coverage terms for those awards is at **Attachment B**.
19. In making a single modern award for the horticulture industry, the Commission decided to limit its scope to the undefined notion of “behind the farm gate”.
20. This decision was made in the context of debate over how to deal with food processing (bottling, canning, juicing and the like).
21. During a conference on 12 December 2008, the following exchange took place between Commissioner Lewin and Mr Longland, representing the Horticulture Australia Council:

MR LONGLAND: The only other thing I wanted to say very briefly was in relation to the food preservers issue.

COMMISSIONER: Yes.

MR LONGLAND: And just submit that we would prefer a situation where those value add style activities if you like that have been part of the horticulture sector, your drying and dehydration et cetera, are included in this stage 2 award, and my friend’s at one with that, and to the extent that the AMWU or others have comments to make about that ---

COMMISSIONER: This is because this occurs inside the farm gate doesn’t it?²
22. During the same conference, the Australian Workers Union said:

MR DECARNE: We do see there being an overlap there with the Preservers Award and something that maybe is beyond us to sort out at this point in time before we can reach stage 3.³
23. Following lengthy discussion between the parties and with the assistance of the Commission, food preserving and processing activities previously within scope of horticultural awards became covered by the Food, Beverage and Tobacco Manufacturing Award 2010 (see **Attachment B**). Potential overlap with the storage services and wholesale industry was neither contemplated nor considered.

The Mitolo decision

24. In *Mitolo Group Pty Ltd v National Union of Workers*⁴, a Full Bench of the Commission considered the coverage term in the Horticulture Award:

² AM2008/14 Award modernisation transcript, 12 December 2008, PN2866-2869. See also transcript of 27 November 2008, PN701-714 and PN740-780.

³ AM2008/14 Award modernisation transcript, 12 December 2008, PN2936.

⁴ [2015] FWCFB 2524

[44] We have earlier set out the definition of “horticulture industry” in clause 4.2 of the Horticulture Award. Paragraph (b) of the definition is clearly not relevant to Mitolo, and no party suggested otherwise. The definition is subject to certain exclusions in clause 4.3, but again there was no issue that none of those exceptions was relevant. The question was therefore whether Mitolo was, in respect of the area of employment covered by the Agreement, in that part of the “horticulture industry” described in paragraph (a) of the definition.

[45] We do not consider that paragraph (a) of the definition is readily amenable to the “substantial character” test because it operates by reference to particular types of work locations used for particular commercial activities. The primary part of the paragraph refers to “agricultural holdings, flower or vegetable market gardens”, and thus emphasises at the outset that the industry is to be defined by reference to where the commercial activity is conducted. It then goes on to list certain types of commercial activity required to be conducted at those locations. The subordinate part of the paragraph beginning with the word “including” then describes additional types of locations - “farms, orchards and/or plantations” - used in relation to fruit and vegetables. We accept Mitolo’s submission that “including” is a word of extension, so to the extent that a relevant location cannot be characterised as an agricultural holding or a flower or vegetable market garden, the location will nonetheless fall within the industry definition if it is a farm, orchard or plantation.

[46] That work location was intended to be a critical element in the coverage of the Horticulture Award is confirmed in the decision of the Full Bench of the AIRC in its Award Modernisation decision of 3 April 2009 in which, among other things, it made the Horticulture Award and other awards relating to agriculture and farming. In relation to coverage, the Full Bench said: “Our overall approach to coverage of the pastoral and horticultural awards is that they should be confined to agricultural production within the ‘farm gate’.” It is clear therefore that it is not sufficient that commercial activities of the type described in paragraph (a) of clause 4.2 are carried on by the employer; they must also be carried out at the type of work locations specified in the paragraph.”

25. The Full Bench went on to find that even though the employer was part of a vertically integrated horticultural business, it was not covered by the Horticulture Award. This was because the Horticulture Award did not apply beyond the ‘farm gate’, but only to persons directly employed on farms in the cultivation and harvesting of potatoes and onions:

“It may be accepted, as submitted by Mitolo, that the evidence demonstrated that the operation at the Angle Vale Road site constituted one part of a vertically integrated business conducted by the Mitolo Group by which horticultural products, namely potatoes and onions, are produced ready for sale. However, it does not follow from that conclusion that the Horticulture Award applied at the test time to the entirety of that business, given the locational limitation in the coverage of that clause to which we have referred. It is consistent with the intention of the Full Bench in the *Award Modernisation* decision that the Horticulture Award not apply beyond the “farm gate” that, in the case of Mitolo Group, it would only apply to those persons directly

employed on the Mitolo Group's farms in the cultivation and harvesting of potatoes and onions and not to other parts of the operation.”⁵

26. The decision in *Mitolo Group* has created significant concern over what appears to be a much narrower scope for the Horticultural Award than was ever intended.
27. Limiting coverage of the Horticulture Award by construing ‘farm gate’ in this way would have the unintended consequences of narrowing the scope of horticultural award coverage in a number of jurisdictions. Rather than continuing to capture horticultural activities from ‘seed to bag’, the Horticulture Award may only cover these activities when conducted on parcels of land that are currently being used to grow crops.
28. Horticultural businesses engaged in, or exploring business structures such as cooperatives, shared packing facilities, relocation of packing sheds to low value land or the offer of packing services to neighbouring farms are now in a ‘grey area’ as far as award coverage is concerned.

The horticulture industry

29. As the horticulture industry evolves to meet the demands of modern food production and increase productivity and competitiveness, the traditional concept of “farm” has also evolved to encompass a broader range of land uses. Farms are farm businesses, encompassing the full range of activities involved in growing produce and getting it off to market.
30. The graphic at **Attachment C** illustrates how packing sheds are used in the horticulture industry. Once growers pack their produce, it can then be delivered to a range of customers including exporters, retailers, wholesale markets or processors. There are many different points at which ownership of the horticultural product changes hands.
31. As the graphic shows, some growers pack their product on-site in their own packing shed, or on another property within their business. In some cases they use a stand-alone packing shed not situated where crops are grown. Some growers use the services of a packing shed owned by another grower or sell their product to another grower where it is subsequently packed. Growers may also be part of a co-operative which packs on behalf of a number of growers - these packing sheds can be situated adjacent to an area under crop or at a separate site or a combination of both within the same business. There are some stand-alone packing facilities that are not owned by growers.
32. There are numerous reasons why a grower might structure their operations in a way that means that the packing shed is not situated on the land on which the crops are grown. This may be because:
 - a. the property is no longer productive farm land;⁶

⁵ [2015] FWCFB 2524 at paragraph 56(1).

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- b. it is a more convenient location to pack fruit and vegetables for both the farm and neighbouring farmers in the area;
 - c. a group of farmers may form a company and invest in a packing facility at a mutually convenient location to overcome the significant infrastructure costs in individual farmers each building and maintaining their own shed;⁷
 - d. the packing shed may be situated on lower value land than the good quality, high value land on which the crops are grown;⁸
 - e. the packing shed may be relocated to improve safety and accessibility for trucks to transport produce to distributors;⁹ or
 - f. a location may be chosen because it offers long term security to the farmer due to state or local government regulations.¹⁰
33. The process of washing and packing produce is an essential pre-condition for sale into most fruit and vegetable markets, particularly the fresh food market.
34. Location does not have any impact on the type of work that is carried out in the packing operation. It is the same, regardless of where the farm's shed is located or what the ownership structure is. Packing shed operations require the same flexibility of hours of work as other work under the Horticulture Award. As with harvesting work carried out in the field, the perishable nature of produce means that produce must be packed immediately after it is picked and sent on to market.¹¹
35. If produce is not picked and packed within a very short, critical time period, it will spoil and be rendered unsaleable or will receive a much lower sale price that does not cover production costs. For these reasons, packing facilities operate according to harvest times, dependent on weather conditions and the ripening of produce in the same way as field work. Sheds may need to operate 7 days a week or at certain times of the day to take advantage of, or avoid, certain weather conditions.
36. Horticultural work of this kind can only fairly be covered by the Horticulture Award. Awards made without regard for the unique circumstances of the agriculture sector were not made in contemplation of the need for a significant degree of flexibility of hours and conditions in the way that agricultural awards were. Their terms are neither appropriate nor adapted to the nature of work in the agriculture sector.

The modern awards objective

⁶ Statement of Keith Rice, paragraph 11.

⁷ Statement of Derek Lightfoot, paragraph 3.

⁸ Statement of Keith Rice, paragraph 15.

⁹ Statement of Derek Lightfoot, paragraph 6.

¹⁰ Statement of Derek Lightfoot, paragraph 7.

¹¹ Statement of Derek Lightfoot, paragraphs 16-18.

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37. The modern awards objective requires that the Horticulture Award promote flexible modern work practices, the efficient and productive performance of work, a simple, easy to understand, stable and sustainable modern award system as well as the sustainability, performance and competitiveness of the national economy.
38. The decision in *Mitolo Group* means that many farm businesses are now unable to conduct their operations in the most efficient and productive way. Farmers must choose between a simple award system which is less operationally efficient, or a complex award system which seeks to maximize operational efficiency and best use of resources.
39. As the evidence in these proceedings shows, unsatisfactory outcomes are likely to arise if the coverage of the Horticulture Award is defined by location, limited only to “functions that require the use of farm land”.¹² A business, or group of businesses, will fall in and out of coverage depending on the type of property on which its various activities are conducted. A range of horticultural activities conducted on the same piece of land will be within the Horticulture Award, while the same activities conducted on different pieces of land may not be.
40. The current coverage terms of the Horticulture Award operate in tension with the modern awards objective. A variation is necessary to ensure that the award system for horticultural employers is simple and conducive to efficiency and productivity. For the following reasons, the NFF submits that the current coverage term no longer meets the modern awards objective and change is necessary to remedy the position.

Sarah McKinnon
General Manager, Workplace Relations & Legal Affairs

19 December 2016

¹² [2015] FWCFB 2524 at paragraph 52.

Comparison of coverage terms – Horticulture industry – pre-2010

Award	Coverage Clause
Horticulture Industry (AWU) Award 2000 (Federal)	<p>6. COVERAGE OF AWARD</p> <p>6.1 Schedule A respondents Clause 1 to 13, 16 to 23 and 26 to 34 of this award apply to the respondents listed in Schedule A in respect of persons employed by them in the States of Victoria, South Australia, and New South Wales in, or in connection with:</p> <p>6.1.1(a) the dehydration of fresh fruits and/or partly dried fruits; 6.1.1(b) the packing of fresh pears and all classes of citrus fruits; 6.1.1(c) the processing of fruit juices; or 6.1.1(d) the cultivating, picking, packing and forwarding of fresh and/or dried fruits and canning fruits.</p> <p>6.2 Schedule B and C respondents Clauses 1 to 11, 16, 17 and 24 to 34 of this award apply to the respondents listed in Schedules B and C, and the members of the respondents listed in Schedule C, in respect of all persons employed by them in Australia in the fruit and vegetable growing industry, including persons engaged in, or in connection with:</p> <p>6.2.1(a) the cultivation, picking, dehydration, crystallisation, washing, juicing, canning, or any other processing, of fruits or vegetables; 6.2.1(b) the storing, packing, or forwarding of fruits or vegetables; or 6.2.1(c) the preparation of vineyard products.</p> <p>6.3 Where an employer bound to this award is also bound by the Pastoral Industry Award 1998, agreement will be reached with employees as to whether this award is to apply.</p>
Horticultural Industry (State) Award (NSW)	<p>33. AREA, INCIDENCE AND DURATION Industries and Callings</p> <p>It shall apply to all employees who are employed in classifications in this award:</p> <p>(a) upon farms, orchards, agricultural holdings, flower or vegetable market gardens in connection with the sowing, raising, harvesting or treating of horticultural products and crops, without limiting the generality of the foregoing including fruit, vegetables, and potatoes; or</p> <p>(b) at clearing, fencing, trenching, draining or otherwise preparing land for any of the abovementioned purposes; within the State, excepting persons performing work within the jurisdiction of the:</p> <p>Wine Industry Consolidated (State) Award, Nurseries Employees (State) Award, Fruit Packing Houses Employees (State) Award, Mushroom Industry (State) Award, Pastoral Industry (State) Award, Cotton Ginning Employees (State) Award, Cotton Growing Employees (State) Award, Oyster Farms Employees (State) Award</p>

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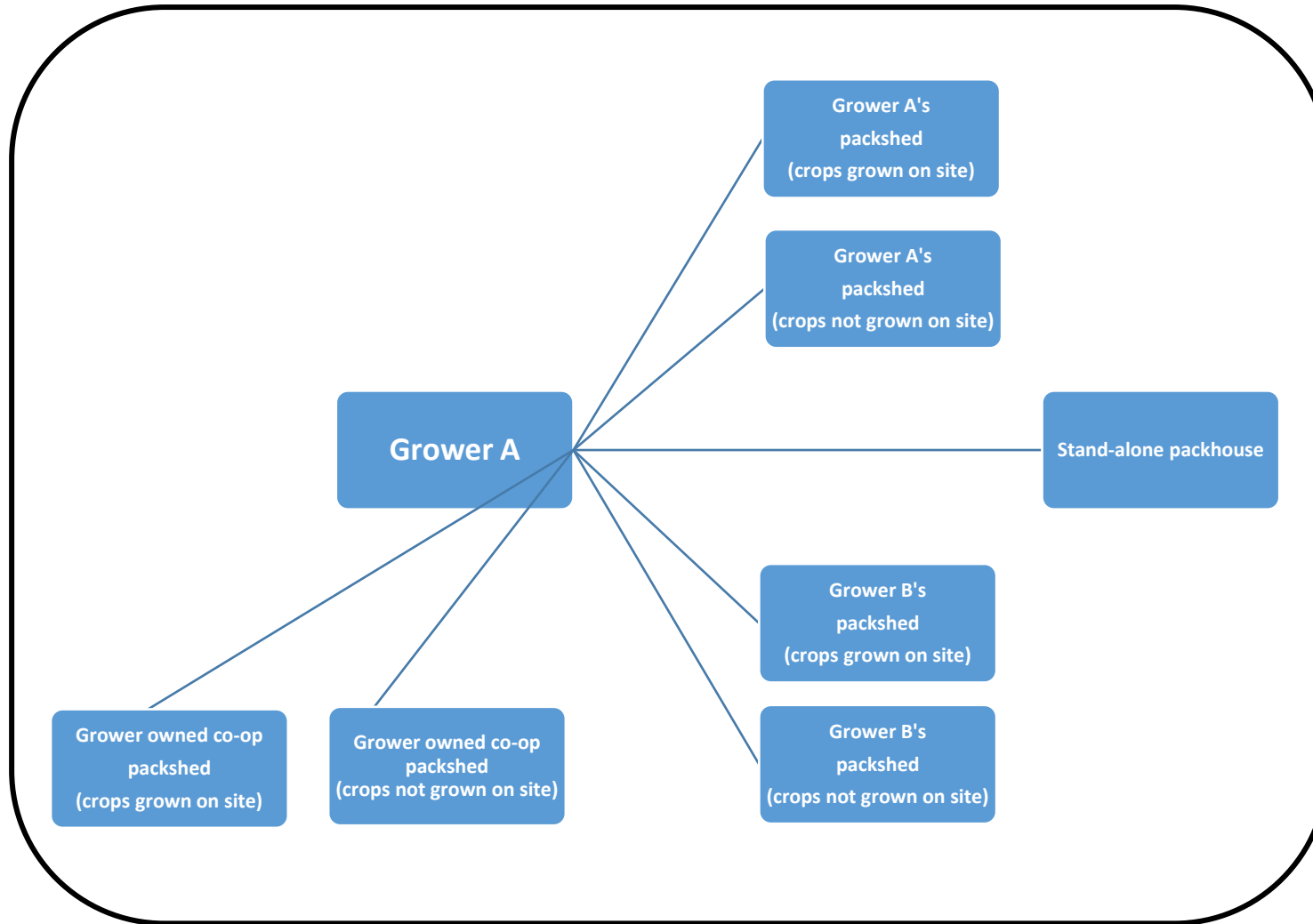
Mushroom Industry Employees (State) Award (NSW)	<p>26. AREA, INCIDENCE AND DURATION It shall apply to employees who are employed by commercial mushroom growers on mushroom farms or in sheds or other like places where mushrooms are grown or cultivated, or in a clearing, fencing, trenching, draining, or otherwise preparing land in connection herewith.</p>
Fruit and Vegetable Growing Industry Award – State 2002 (QLD)	<p>1.4 COVERAGE Subject to the exemptions in clause 1.7, this Award applies to all employers and their employees engaged in the fruit and vegetable growing industry, including the preparation of land, cultivation, planting, care, picking, handling, treating, packing and despatching of all fresh fruits (including tomatoes) and vegetables, on or from fruit and vegetable farms, vineyards, orchards and plantations, throughout the State of Queensland.</p>
The Dried Vine Fruits Industry Award 1951 (WA)	<p>3. - SCOPE This Award shall apply to all workers employed by the employers in the Dried Vine Fruits Industry.</p>
The Fruit Growing and Fruit Packing Industry Award (WA)	<p>3. – SCOPE This award shall apply to all workers employed by the Respondents in the Classifications contained in clause 24. - Wages engaged in the Fruit Growing and Fruit Packing Industry, including the preparation of land, cultivation, planting, care, picking, handling, treating, packing and dispatching of all fresh fruits including tomatoes on or from gardens, farms, orchards and in packing sheds.</p>
Farming and Fruit Growing Award (TAS)	<p>2. SCOPE This award is established in respect of the industry of farming and/or fruit growing and without limiting the generality of the foregoing, shall include:</p> <ul style="list-style-type: none"> (a) the preparation, sowing, raising, harvesting, preparation for packing, and packing of crops including grains, vegetables, peat moss, fungi, hops, nuts, or other specialised crops grown for the production of essential oils or pharmaceuticals; (b) livestock farming including the management, breeding, rearing and/or grazing of horses, cattle, sheep, pigs, goats, poultry, deer and/or other livestock and dairy farming; (c) fruit growing including the management, cultivation, picking, grading, processing for packing, packing and/or forwarding of fresh fruits including grapes; (d) seed farming and/or silviculture where such work is performed in conjunction with the activities specified in subclauses (a), (b) and (c) of this clause; (e) apiarist; (f) floriculturist (as defined); (g) viticulture.

Comparison of modern award coverage terms – horticulture, food processing and storage industries

Attachment B

Award	Coverage Clause
Horticulture Award 2010	<p>This industry award covers employers throughout Australia in the horticulture industry and their employees in the classifications listed in Schedule B—Classification Structure and Definitions, to the exclusion of any other modern award.</p> <p>Horticulture industry means:</p> <p>(a) agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivation, harvesting, picking, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations; or</p> <p>(b) clearing, fencing, trenching, draining or otherwise preparing or treating land for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables.</p>
Food, Beverage and Tobacco Manufacturing Award 2010	<p>This industry award covers employers throughout Australia in the food, beverage and tobacco manufacturing industry and their employees in the classifications in this award to the exclusion of any other modern award.</p> <p>food, beverage and tobacco manufacturing means the preparing, cooking, baking, blending, brewing, fermenting, preserving, filleting, gutting, freezing, refrigerating, decorating, washing, grading, processing, distilling, manufacturing and milling of food, beverage and tobacco products, including stock feed and pet food, and ancillary activities such as:</p> <p>(a) the receipt, storing and handling of ingredients and raw materials to make food, beverage and tobacco products, including stock feed and pet food;</p> <p>(b) the bottling, canning, packaging, labelling, palletising, storing, preparing for sale, packing and despatching of food, beverage and tobacco products, including stock feed and pet food; and</p> <p>(c) the cleaning and sanitising of tools, equipment and machinery used to produce food, beverage and tobacco products, including stock feed and pet food.</p>
Storage Services and Wholesale Industry Award 2010	<p>This industry award covers employers throughout Australia in the storage services and wholesale industry and their employees in the classifications listed in clause 14—Classifications.</p> <p>storage services and wholesale industry means the receiving, handling, storing, freezing, refrigerating, bottling, packing, preparation for sale, sorting, loading, dispatch, delivery, or sale by wholesale, of produce, goods or merchandise as well as activities and processes connected, incidental or ancillary</p>

Horticulture industry – packing shed scenarios



IN THE FAIR WORK COMMISSION

Matter No: **AM2016/25 Horticulture Award 2010**

Re: **Application by National Farmers' Federation**

STATEMENT OF PHILIP TURNBULL

On the 19th December 2016, I, Philip Turnbull of _____ in the State of _____, state as follows:

1. I am the CEO of Apple and Pear Australia, an industry body representing commercial apple and pear growers.
2. I grew up on an apple and pear orchard and worked for 18 years in the family business; based in Ardmona, Victoria. While I am no longer directly involved in fruit growing, I have a good understanding of the apple and pear industry.
3. Apple and pear growers supplying the fresh market need to wash, pack and often cool store fruit before delivering to market. This process happens in a packing facility which can either be situated where the fruit is grown or in a separate location, depending on land availability, access to inputs like electricity and water, logistical reasons and so on.
4. Some growers may use the neighbour's packing facility or the facility might be jointly owned by a number of growers. The decision of which packing option to use is typically dictated by growers' commercial relationships with neighbours and/or how growers have historically chosen to invest their capital and resources. That is, whether they have focused investment on the orchard or on more orchard or packing facilities.
5. Regardless of where the packing facility is located, the process of washing, packing & cool storing fruit is an essential part of supplying fruit to market. This process involves making fruit food safe (washing the produce of field dirt and human touch after fruit is harvested by hand) and adding value by removing damaged fruit and grading into different sizes.
6. The requirement for washing, packing & cool storing is a requirement from all parts of the market – supermarkets, independent retailers and the wholesale markets.
7. Whilst apple & pear varieties have different harvest timings, packing facilities have peak periods, especially around harvest time, when popular varieties all require either washing, packing and cool storage. Harvest volumes and timings change from year to year so scheduling is challenging. Larger packing facilities that consolidate a number of growers fruit typically have the capacity to handle surges in volume.

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Date:

Lodged by National Farmers' Federation

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IN THE FAIR WORK COMMISSION

Matter No: AM 2016/25 Horticulture Award 2010

Re: Application by National Farmers' Federation

STATEMENT OF BRETT GUTHREY

On the 12th December 2016, I, Brett Guthrey of _____ in the State of _____, state as follows:

1. I am a Persimmon grower and am also Chairman of the NSW Farmers Horticulture Committee and President of Persimmons Australia Inc.
2. I am the 3rd generation of our family to farm the current site at Cobbitty NSW. The farm was purchased in 1958. Initially vegetables were grown then stonefruit and now persimmons. I have 3 adult sons, 2 are working in the Horticulture industry but not at the grower level and the other has just graduated from university. Our orchard would be suitably classified as a small family farm. It is just less than 100 acres in size and turnover typically over \$500,000.00. It is situated in the Sydney basin and has required innovative and adaptive skills to maintain its presence.
3. We grow, pick, grade, pack, store and sell our persimmons on the orchard property. This allows the efficient migration of labour to be focused where needed during an 8 week harvest that demands the entire yearly income be derived. Sales are also conducted through the Central Markets.
4. The onsite processing of the persimmon fruits facilitates the effective management of the business where I need to control every facet of the operation. The monitoring of the quality of the fruit being picked and consequently packed is essential for the business to operate. Short harvest time frames and vagrancies with the weather necessitate the movement of labour between the field where the fruit is picked and the packing shed where it is processed.
5. The orchard primarily operates in the "niche" market. Most fruits are sold locally in Sydney through boutique fruit shops in high value areas. Approximately 50% of our product is sold direct to consumers
6. Most of the product is packaged into 4kg trays. It is then cool stored and transported by me to Sydney Markets as required.
7. We employ 3 full time equivalents and about 10 additional staff during harvest. 70% of the staff work picking in the field and 30% work in the packing shed. All staff are not fixed in their duties and move to the work areas as required.
8. The markets available for selling our fruit are changing. International competition for market share increases year on year. My interests in horticulture have taken me to farms in Australia, New Zealand, China, Korea and Japan. The main differentiation for Australian farms is the predominance of capital intensive investments on farm for the purpose of grading and packing of produce. Other countries typically fully utilise the best soils for the growing of produce. Many form partnerships or Co-ops off farm

to facilitate the packing and grading of produce. In Australia as the size of farms increase to gain economies of scale, production sites are spread to mitigate weather risk and prolong seasonality. There is a growing trend to minimise capital outlays on farm and setup centralised packing / storage facilities.

9. A typical horticulture business supplying fresh produce to market have to grade, pack and store that produce before transporting it to market. This is an essential pre-condition for produce leaving the farm and many do this using an on-farm facility.
10. Farmers are increasingly looking to expand to overseas markets. To do this they must be cost competitive.

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Date: 15/12/16

Signature
Brett Guthrey

IN THE FAIR WORK COMMISSION

Matter No: AM 2016/25 Horticulture Award 2010

Re: Application by National Farmers' Federation

STATEMENT OF DEREK LIGHTFOOT

On 12th December 2016, I, Derek Lightfoot of _____ in the State of _____, state as follows:

1. I am the Managing Director of Tropical Pines in Queensland and a Board Director of Growcom, the peak horticultural body in Queensland.
2. Tropical Pines is a combined horticultural packing and marketing operation. We work with 22 pineapple farmers across Queensland to supply fresh pineapples to all major retailers, market agents and food processors in all capital cities of Australia.
3. The company is a private company, owned by pineapple farming families in all regions. The company was established so that each of the farm owners in the group could work cooperatively for the benefit of the group as a whole. We operate a packing shed on farm in the Sunshine Coast region and a new packing facility and head office in Yeppoon, which is situated on repurposed farm land.
4. The company started with one packing shed in Yeppoon on farming land that serviced four farmers and then expanded to lease a packing shed on farming land on the Sunshine Coast, where we now have 14 farmers supplying fruit.
5. About 5 years ago the company built a new farm packing facility and office in Yeppoon on repurposed farm land adjacent to the original farm, after the farm was sold to developers.
6. The site was given to the local Council after a decision was made to move part of the Golden Circle cannery business, a pineapple dispatch yard, from the centre of Yeppoon to a convenient area outside the town centre. The Council invested in development of the land to create a safer and more appropriate area for truck movements. Tropical Pines leases the Yeppoon site from the Council and uses it for our fresh fruit packing facility.
7. Our site on the Sunshine Coast is located on a farm that was owned by one of our farmers in the region. We have also recently purchased additional rural land nearby, with plans to build a new packing facility for our 14 farmers in the region and give greater certainty of the future of our packing facility.

Lodged by National Farmers' Federation

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8. Each packing shed is an investment of millions of dollars and therefore careful analysis is undertaken before determining the most appropriate site. Having made the decision and the investment, we are not in a position to change location for the foreseeable future.
9. We assist farmers by packing fresh fruit in cardboard trays and bins, providing an agronomist to assist on farm, arranging all logistics and managing all sales and marketing activity to over 40 customers nationally.
10. We do not purchase fruit from the farmer group but rather pack and market fruit on their behalf, and provide returns back to the farmers once the fruit is sold.
11. The farmers we support are in three regions of Queensland: the Sunshine Coast, Yeppoon in Central Queensland and near Rollingstone, North of Townsville.
12. For farm businesses north of Townsville we assist with agronomy, sales and marketing for the benefit of farmers who operate their own packing facility.
13. We employ 50 people across our sites, most of whom are casual employees because of the nature and seasonality of the work.
14. About 60% of our fruit is now supplied and packed through our Sunshine Coast shed, with 30% from our Yeppoon facility and 10% from North Queensland.
15. A key strategy of the company is to supply fruit from different regions to provide year round supply for all customers across Australia.
16. The time for packing fruit and getting fresh food to market is critical to avoid unnecessary spoil and reduction in shelf life.
17. Our packing operation in each location is entirely driven by harvest times, which are affected by weather events. We are packing fresh fruit, with a limited life after it has been picked, and it must be packed immediately after it is picked. We are unable to schedule our work during normal business hours, as it depends entirely on when a particular crop needs to be picked. This could be on the weekend or early in the morning before the heat sets in. There are often times of the year when our group of farmers harvests over 7 days of the week.
18. This underlines the importance of our being able to operate efficiently in response to harvest demands, without which our business, and those of our farmer group, would be seriously affected.

.....

.....
Signature
Derek Lightfoot

Date: 16-12-16

IN THE FAIR WORK COMMISSION

Matter No: AM 2016/25 Horticulture Award 2010

Re: Application by National Farmers Federation

STATEMENT OF GAVIN SCURR

On the 14th December 2016, I, Gavin Scurr of _____ in the State of _____, state as follows:

1. I am the Managing Director of Pinata Farms Pty Ltd and also a director of the Australian Mango Industry Association which is the peak body representing the Australian mango Industry.
2. Pinata Farms fruit growing, packing and marketing business with farms in the Northern Territory and Queensland. Along with my brother Stephen we now run the business. We are third generation growers with three of our children now working in the business also.
3. Pinata Farms grows mangoes in three locations in the Northern Territory and two in Queensland. We grow pineapples in two locations in Queensland and one in the Northern Territory and strawberries in two locations in Queensland. Each of these locations have farms and packing sheds to pack the produce produced there before it is transported to market.
4. As a business we harvest pineapples and strawberries every week of the year and mangoes from October to March across these locations. This is to enable us to supply a consistent product to our customers.
5. Pinata Farms has long term contracts with the major retailers in Australia. These contracts are based on our ability to supply our customers as they require. All of our fruit has a very short shelf life so we need to harvest continually to be able to supply.
6. Our fruit is harvested and then transported to the packing shed in that region for packing. All fruit is packed into cardboard cartons which are then stacked on pallets and then cooled before transporting on refrigerated truck to our customers.
7. We use specialised transport companies to transport our fruit from packing shed to customer.
8. We harvest and pack all our own fruit using our own employees or employees of labour hire companies. Due to the seasonal nature of our crops in each region our requirement for labour fluctuates considerably.
9. We usually have between 120 and 300 people working on our farms or in our packing sheds at any one time.
10. Most businesses growing the fruit we grow operate similar to us regardless of size.
11. A typical horticulture business supplying fresh produce to market have to wash, pack and store that produce before transporting it to market. This is an essential pre-condition for produce leaving the farm and many do this using an on-farm facility.

12. As horticultural businesses expand and look to improve efficiency and maximise land potential, many have begun to look at alternate business structures such as packing facilities situated on a separate piece of land, cooperatives and shared farm packing facilities.
13. In circumstances where a farm builds a large packing facility either on their main farm or on a separate piece of land, they may offer packing services to other local farmers to cover the expense of installing new infrastructure.
14. Cooperatives work in a similar manner. Farmers share the cost of production by sharing services such as packing facilities.
15. Packing shed workers often remain in the packing shed for the season but will swap around between the packing shed and the field work on occasion as required.
16. Regardless of whether the packing facility is on-farm or off-farm, the work that is performed is of the same nature and consists of washing, sorting and packing produce.
17. A packing facility may be situated on a separate piece of land for numerous efficiency reasons. Some examples include it being a safer access point for trucks, it is closer to a distribution centre, it is more cost effective, land value of that particular block of land is less suited to farming, water access, geographic considerations such as weather impacts, logistics, workplace conditions, urban encroachment and land use restrictions.
18. For similar reasons, a farmer may also decide that it is more efficient in their business for the packing shed to be on the farm.
19. While we strive to have a consistent flow of fruit for our customers we are always at the mercy of the weather. If we get a hotter than normal spell of weather this can bring forward harvesting which means we need to work longer hours to get it all harvested before it spoils and is lost. This includes weekends and nights. Even under normal production our staff often prefer to work at night as it is substantially cooler.
20. To enable our business to be sustainable we require a workforce that is allowed to be flexible to accommodate the fluctuating harvest requirements.

.....
Signature
Gavin Scurr

Date: 14.10.16.....

IN THE FAIR WORK COMMISSION

Matter No: AM 2016/25 Horticulture Award 2010

Re: Application by National Farmers Federation

STATEMENT OF KEITH RICE

On the 8th of December 2016, I, Keith James Rice of _____ in the
State of _____, state as follows:

1. I am Chief Executive of Primary Employers Tasmania and Poppy Growers Tasmania and have been for 30 years.
2. I have over forty years' experience in industrial relations and in my current role, as in previous roles, I provide advice to employers on the Horticulture Award 2010 and its predecessor awards.
3. During the past forty years I have provided advice to diary, livestock, cropping and vegetable farmers, fruit growers and vineyards operators regarding their obligations under particular awards including which award covers their enterprise.
4. Up until the 31st December 2009 fruit growers, vegetable farmers and vineyard operators were covered by Schedule B and C of the Horticultural Industry (AWU) Award 2000.
5. The above award also applied to the storing and packing, or forwarding of fruit or vegetables.
6. The award did not limit its application to work performed "on farms."
7. Since 1st January 2010 with the introduction of the Modern Horticulture Award 2010 the growing of wine grapes has been excluded from that award and included in the Wine Industry Award 2010.
8. For all intents and purposes with the exception of wine grapes the coverage of the Horticulture Award 2010 remained the same in respect of the meaning of Horticulture Industry as the predecessor award.
9. That is the term "upon farms, orchards and/or plantations" was given its widest meaning in that not all the prescribed activities had to be performed "inside" the farm and/or orchard gate.
10. It has been my experience that with the decline in the apple industry in Tasmania many orchards had the fruit trees pulled out and the land was put to other activities.
11. The packing sheds on each orchard in some instances being modern with modern equipment were leased or purchased by another fruit grower to pack out their own fruit and perhaps contract pack for others

Lodged by National Farmers' Federation

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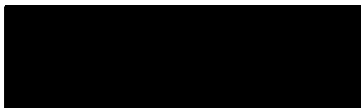
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12. The packing shed was not situated within the orchard gate of the owner of the fruit, but was an integral part of that fruit grower's enterprise.
13. Likewise the vegetable industry, many vegetable farmers have expanded from growing vegetables for the processing sector to growing for the fresh market.
14. As this has occurred they have needed to expand their enterprise to not only grow and harvest the vegetables but also to wash, pack, store and forward the finished product.
15. It does not make commercial sense to build a new facility on expensive ground within the confines of the farm gate when suitable land/facilities can be leased/purchased to adequately accommodate this section of the farming enterprise.
16. The Mitolo decision created serious doubt for those enterprises which operate a part of the enterprise outside the boundary of the actual farm.
17. On the one hand we are talking about enterprises which have an integrated business model where fruit and/or vegetables are cultivated, harvested, washed, graded, packed, stored, forwarded or otherwise treated within the strict confines of the farm gate. There is no doubt such enterprises are covered by the Horticulture Award 2010.
18. On the other hand we have identical enterprises where part of their operations are not performed on productive farm land, and as a result, their employees appear not to be covered by the Horticulture Award 2010.
19. To add to the confusion with today's complex financial and ownership arrangements it is not uncommon for the land to be owned by one entity, the employees engaged by another entity and the washing, packing, storing and forwarding facility albeit situated within the confines of the farm gate owned by an entirely different entity.



Signature
Keith James Rice

Date: *9th Dec 2016*