



# REPORT TO THE FULL BENCH

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **HORTICULTURE AWARD 2010**

(AM2014/231) [MA000028]

DEPUTY PRESIDENT CLANCY

MELBOURNE, 25 AUGUST 2016

*Horticulture Award 2010*

## **HORTICULTURE AWARD 2010**

[1] A conference was held in Melbourne, with a video link to Sydney on 8 August 2016 attended by representatives of:

- Australian Federation of Employers and Industries (AFEI)
- Ai Group
- National Farmers Federation (NFF)
- The Australian Workers' Union (AWU)
- Voice of Horticulture

[2] The parties discussed the exposure draft of the *Horticulture Award 2015* as published on 29 July 2016 and the Summary of Submissions published on 22 July 2016 by the Commission (Summary of Submissions).

[3] Further proposed variations to the exposure draft that are agreed by the parties are summarised in Attachment A.

[4] Further proposed variations from the Summary of Submissions that are not agreed are summarised at Attachment B.

[5] It was noted that Items 4, 48 and 49 have been referred to separately constituted Full Benches of the Commission.

[6] As to Item 53, the AiGroup has indicated that should the Commission's Award Modernisation team conduct an analysis of the definition of "*wine industry*" as it appears in various Awards, it will review its position regarding the definition of "*wine industry*" to be included in Schedule G and may seek an opportunity to provide comment in response, particularly if the analysis suggests the proposal of the NFF for a uniform definition would result in an unintended substantive change to Award coverage.

[7] In relation to Item 56, it was foreshadowed that the definition of “*horticultural crops*” in Schedule G may be addressed as part of the claim by employer groups to vary the coverage of the *Horticulture Award 2010* during the Award stage and the interaction between the *Pastoral Award 2010* and *Horticulture Award 2010* may require further discussion.



DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<Price code C>

## **Attachment A**

Item 9 – The NFF proposal to insert sub-clause 15.2(b)(i) into the table of Facilitative provisions is not opposed by the AFEI or AiGroup. It is also not opposed by the AWU, subject to the inclusion of TOIL of overtime being consistent across exposure drafts.

Item 19 – There was no opposition by the parties present to a proposal from the AWU to amend the wording of sub-clause 8.1(a)(iv) to “All time worked by full-time and part time employees in excess of the ordinary hours will be deemed overtime”. It is possible the VOH will also take the opportunity to provide its view on this proposal.

Item 21 – The NFF proposal to delete sub-clause 9.1(b), on the basis that its wording is already contained in sub-clause 9.1(a), was not opposed.

Item 36 – All parties agreed that the wording in sub-clause 14.1(h) in the exposure draft of the *Horticulture Award 2015* as published on 29 July 2016 should be amended to read “All time worked in excess of the ordinary hours will be deemed overtime”.

Item 57 – The agreed definition of *horticultural industry* should be in the body of the Award, rather than placed in Schedule G.

## Attachment B

Item 12 – The AiGroup proposal to replace “ordinary hourly rate” in sub-clause 6.4(b) with “minimum hourly rate” is not opposed by the AFEI. The NFF prefers the word “minimum” because it is the word currently used in the Award but the AWU opposes the AiGroup proposal. The AiGroup disputes the assertion that this issue has been determined at paragraphs [35] and [91] of [2015] FWCFB 4658.

Items 13 and 14 - The assertion that the disputed matters from these items have been determined at paragraphs [35] and [91] of [2015] FWCFB 4658 is not agreed. There remains no agreement on the proposal to replace “ordinary” in sub-clause 6.5(c)(i) with “minimum”.

Item 15 – The NFF and AFEI do not agree there can be casual shift workers working under this Award, while the AiGroup does not have a concluded view. The AWU maintains that casual employees can be engaged as shift workers.

The NFF Objects to the splitting of sub-clauses 22.1 and 22.2 from the current Award into sub-clause 8.1 and clause 14 in the exposure draft of the *Horticulture Award 2015* as published on 29 July 2016 and submits that clause 14 should become sub-clause 8.2 in the exposure draft.

Item 23 – The employer groups favour the use of the term “minimum hourly rate” as opposed to the reference to “ordinary hourly rate” adopted in the exposure draft. They submit the change is substantive and disturbs the status quo, but the AWU disputes this and supports the exposure draft wording.

Item 24 – The AiGroup opposes changing “each morning” in sub-clause 9.2(a) to “each day” or “each shift” but all other parties were not opposed.

Item 25 – The AWU proposal to insert the words “or shift” at the end of sub-clause 9.3(a) continues to be opposed by the AiGroup.

Item 27 – the NFF proposal for defining the full and base rate of pay for pieceworkers for the purposes of calculating NES entitlements, circulated on 5 August 2016, is:

*“For the purpose of the NES, the **full rate of pay** for a pieceworker is calculated by dividing the total amount earned by the employee during the 12 months immediately preceding the taking of the NES entitlement by the total daily tally for the employee for days worked in that period, and dividing that daily tally by 7.6.”*

and

*“For the purpose of the NES, the **base rate of pay** for a pieceworker is calculated in the same way as the full rate of pay for a pieceworker and then reduced by 15% (for permanent employees) or 40% (for casual employees).”*

This proposal is opposed by the AWU. The AiGroup has indicated it would seek to be heard in relation to the NFF proposal when it is considered by the Full Bench.

Item 38 – All parties hold the view that this disputed issue will be resolved in the Casual and Part-time employment Common issue proceedings.

Item 45 – the parties have not reached agreement as to whether the headings for the tables in Schedule B should reference “ordinary hourly rate” or “minimum hourly rate” and the AiGroup will now be preparing a submission identifying all Awards in respect of which this issue arises.

Item 47 – the parties submitted that the question relating to whether casual employees can receive overtime rates is being dealt with in the Casual employment Common issue proceeding while the question of whether casuals can receive shift work rates remains in dispute.