

The Fair Work Commission
Casual terms award review 2021 — Matter No. AM2021/54

SUBMISSION
NATIONAL FARMERS' FEDERATION

Date: 23 June 2021

1. We refer to the President's direction of 22 June 2021 for parties with an interest in this matter to file a short note regarding the provisional views which the Commission expressed in its Statement issued on 21 June 2021 (**the Provisional Views**).
2. The NFF does not contest any of the Provisional Views, save with respect to Question 5 of the Commission's Discussion Paper. In respect of question 5, in its submission dated 28 May 2021 the NFF indicated as follows:

[W]e do not anticipate s 15A of the Act creating any inconsistency or difficulty with the operation of Part 9 of the Pastoral Award and cl 50.1 in particular.

We note that following discussions between the NFF and the AWU, it would appear that both organizations appear to be in high level agreement on this point. Furthermore, we vigorously concur with the notions (which we understand the AWU to hold) that these provisions have a long and detailed history, and that this review should avoid anything which might disturb their operation.

That said, we refer to — and given the complexity of those provision and their history vigorously reiterate — our observation at paragraph 5 above. If it should become apparent that some aspect of the operation of the Award is compromised by the s15A definition, we reserve the right to apply to the Commission for necessary variation(s) to the Award.

3. In general terms we maintain this view. The NFF members are concerned that any unnecessary changes to the Award may upset the historical conditions and/or result in unforeseen consequences. Given the usual practices of the shearing industrial, we do not anticipate there is any realistic prospect of the types of employee identified in clause 50.1 being engaged in a capacity or in circumstances which are not in keeping with the definition of 'casual employee' at s 15A(1) of the Act. As such, it is our view that the risk of change — and the prospect of unforeseen consequences or problems — exceeds the risk of leaving the Award in its current state.

4. However, that conclusion appears to be incompatible with the Commission’s provisional view, and we accept that there is at least the theoretical prospect of difficulties arising from the new definition at s 15A of the Act and consequent changes to the Award (and, accordingly, in our initial submission we expressly reserved the right to seek a variation if any problems did arise in the future).
5. On that basis and assuming the Commission stands by its Provisional View then in our submission the best course would be to vary the Pastoral Award as follows:
 - (i) Delete reference to “on a casual basis” from clause 50.1 so that it reads:

Employees engaged for work in a shed, other than Woolclassers and Shearing shed experts, will be engaged ~~on a casual basis~~ in one or more of the following categories: shearer; crutcher, [etc...].
 - (ii) Supplement the formulas in Schedule A of the Award — which are currently based on an assumption that all employees to which they refer will be employed on a casual basis — with formulas which calculate and specify the rates for ‘non-causal’ employees.
 - (iii) Vary clause 51 of the Award as necessary to include the new rates in schedule A with respect to any employees who are found not to be engaged on a casual basis.
6. If the Commission decides to accept this course then we submit that the interested parties should be given a reasonable time and opportunity (in light of the complexity of the task) to determine what specific variations are necessary to schedule A and clause 51 (and any subsequent changes), and report back to the Commission accordingly.

Ben Rogers

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