

4 yearly review of modern awards –Pastoral Award

Matter No. AM2014/239

NATIONAL FARMERS' FEDERATION

**SUBMISSIONS IN REPLY ON EXPOSURE DRAFT –
PASTORAL AWARD 2016**

Date: 5 May 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 is in response to amended directions issued 23 March 2016 instructing interested parties to file written submissions in reply on the technical and drafting issues related to exposure drafts in Group 3 by 5 May 2016.
3. This submission responds to submissions on the Exposure Draft released for the Pastoral Award 2016.

The Statutory Framework

4. Under section 156 of the *Fair Work Act 2009* (**FW Act**), the Fair Work Commission (**Commission**) is required to review each modern award in its own right every four years.
5. Section 134 of the FW Act contains the modern awards objective. Modern awards must provide a 'fair and relevant minimum safety net of terms and conditions' of employment, taking into account the following criteria:
 - a. relative living standards and the needs of the low paid (subsection 134(1)(a));
 - b. the need to encourage collective bargaining (subsection 134(1)(b));
 - c. the need to promote social inclusion through increased workforce participation (subsection 134(1)(c));
 - d. the need to promote flexible modern work practices and the efficient and productive performance of work (subsection 134(1)(d));
 - e. the need to provide additional remuneration for employees working overtime; unsocial, irregular or unpredictable hours; on weekends or public holidays; or shifts (subsection 134(1)(da));
 - f. the principle of equal remuneration for work of equal or comparable value (subsection 134(1)(e));

- g. 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));
 - h. 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
 - i. 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)).
6. Under section 136, a modern award can only include terms that are permitted or required by:
- j. Subdivision B of Part 2-3 (terms that may be included in modern awards)
 - k. Subdivision C of Part 2-3 (terms that must be included in modern awards)
 - l. Section 55 (interaction between the National Employment Standards (**NES**) and modern awards or enterprise agreements); or
 - m. Part 2-2 (NES).
7. Section 138 of the FW Act provides for modern awards to include terms that are either permitted or required to be included, but only to the extent necessary to achieve the modern awards objective and the minimum wages objective.
8. Modern award terms must not exclude the NES, or any provision of the NES (subsection 55(1)).
9. In a statement issued on 5 December 2014, the Commission indicated that the exposure drafts ‘incorporate any technical and drafting changes proposed by the Commission and identify provisions that may need further review. The exposure drafts do not incorporate any substantive changes and do not represent the concluded view of the Commission on any issue.’¹ This reflects the approach taken throughout the award review stage.

General Provisions

Reference to other proceedings

10. As a general comment, matters raised in these proceedings that are concurrently being dealt with in other modern award review proceedings are beyond the scope of these proceedings and should not be addressed.

Clause 3.3 - Coverage

11. The Australian Workers’ Union (**AWU**) propose that exclusion of coverage under the Pastoral Award should be linked to the coverage of other awards specifically rather than industries.

¹ FWCFB 6188 [2014].

12. We support the proposal by the AWU with one suggested change to wording in the first paragraph of this clause:

‘Without limiting the generality of the exclusion in clause 3.1, this award does not cover employers or employees covered by:’

Clause 6.3(a) – Full-time employees and Clause 6.4(a)(i) – Part-time employees

13. At paragraphs 7 and 8 of their submission, the AWU have suggested that these clauses should be amended to restrict the number of hours that a full time and part time employee will be engaged to work to ‘ordinary hours’.

14. We do not agree with this submission. The definitions clause is not intended to deal with rates of pay and this change will alter the meaning of the clause.

Clause 6.5(c)(i) – Casual pieceworkers

15. We note the form of wording suggested by the AWU and Business SA. In our view, the wording proposed in our submission of 14 April 2016 should be preferred.

Clause 7 - Breaks

16. We support the AWU submission that piggery attendants who are shiftworkers should be excluded from the operation of clause 7. We propose the following alternative form of words:

‘The following provisions will apply to all employees other than:

- *employees engaged in shearing operations who will be entitled to the breaks prescribed in Part 8 – Shearing Operations; and*
- *piggery attendants who are shiftworkers who will receive the paid crib break as per Part 6 – Pig Breeding and Raising’*

Clause 10.1(c) – First aid allowance

17. We note the concerns of the AWU. In our submission, the first aid allowance is an all purpose allowance. Clause 10.1(a)(ii) makes it clear that the allowance is payable for all purposes of the Award.

Clause 10.2(c) – Overtime meal allowance

18. We refer to our submission of 14 April 2016.

Clause 14.4(a)(i) – Annual leave loading

19. We do not agree with the AWU submission that the words “as performed between Monday and Friday” should be removed.

Clause 14.8 – Proportionate leave on termination

20. We do not agree with the AWU’s proposed changes to this clause, which would alter the meaning of the clause. This matter is being dealt with in the annual leave common proceedings.

Clause 18.2(b) – Substitution of certain public holidays

21. Retaining the wording of clause 26.2(b) of the *Pastoral Award 2010* as suggested by the AWU aligns with our view expressed in our submission dated 14 April 2016.

Part 5 – Broadacre Farming and Livestock Operations

Clause 23.2 – Farm and livestock hand level 2

22. We note the view of the AWU but prefer our submission of 14 April 2016 on this issue.

Clause 24.3 – With keep rate

23. The alternate wording suggested by the Commission in relation to this clause in the exposure draft to express the ‘with keep’ amount as a deduction from the employee’s total wages has been supported by the AWU, Business SA and Australian Business Industrial (ABI) and New South Wales Business Chamber (NSWBC). This proposal would change the meaning and increase costs for employees as outlined in our submission of 14 April 2016.

Clause 25.3 – Special allowances

24. We support the suggested wording proposed by the AWU in relation to this clause.

Clause 26.3 – Station cooks

25. We refer to our submission of 14 April 2016 on this issue and maintain that the words ‘appropriate weekly rate’ should not be changed to the ‘FL1 ordinary hourly rate’. We note that our view corresponds with that of the AWU and Business SA but differs from that of ABI and NSWBC.

Clause 27.4 – Overtime and penalty rates

26. We note the AWU submission that clause 27.4 should be deleted. This would represent a substantive change. The exposure draft process is not the forum for new substantive claims where no such claim has been made in the award stage.

Clause 27.5 – Overtime and penalty rates

27. We note the AWU’s proposed change to the wording of this clause and suggest alternate wording as follows:

‘Overtime and public holiday rates are calculated on the ordinary hourly rate before any deduction is made for keep’

Part 6 – Pig Breeding and Raising

Clause 30.2 – Ordinary hours of work

28. The form of wording proposed by the AWU for this clause would have the effect of changing the meaning of the clause. The clause should be left as is currently proposed in the exposure draft.

Clause 31.1 – Shiftwork definitions

29. In response to the submission of the AWU, the term ‘non-successive shifts’ is a new term and hence a new concept in the award.

Clause 31.6 - Shiftworker

30. Business SA have taken the view that a definition of ‘day shift’ should be implemented. We oppose this view and refer to our previous comments in our submission dated 14 April 2016.

Clause 32.2 – Overtime and penalty rates

31. We note the AWU submission in relation to this clause and refer to our previous submission of 14 April 2016.

Clause 33 – Saturday and Sunday penalty rates

32. We note the changes proposed by the AWU in relation to ‘clause 33 - day workers’ and refer to our submission of 14 April 2016.

33. We support the other aspects of the AWU’s proposal in relation to shiftworkers.

Part 7 – Poultry Farming

Clause 38.1(a) - Overtime

34. We support the amendment proposed by the AWU in relation to this clause.

Part 8 – Shearing Operations

Clause 39.2(c)(ii) – Minimum daily payment

35. We support the amendment proposed by the AWU in relation to this clause.

Clause 40.3(b) – Lack of amenities allowance

36. We refer to our submission of 14 April 2016.

Claus 40.5(g) – Rates for Woolpressers

37. We agree with the AWU that the cross reference in this clause should be amended.

Clause 41.2 – Allowance where sleeping quarters are not provided

38. We agree with the AWU that the percentage in this clause should be retained.

Clause 44.7(b) – Allotment of stands

39. We note the proposal of the AWU and prefer the form of words in our submission of 14 April 2016.

Clause 46.1 –Payment for public holidays

40. In response to the AWU’s submission, we refer to our submission of 14 April 2016.

Schedules

Schedule B.4.1 – Full-time and part-time piggery attendant adult employees (all employees including shiftworkers) – ordinary and penalty rates

41. In response to the AWU's submission we support the exclusion of shiftworkers and the addition of a 200% Sunday column provided that the column applies to 'Sunday – overtime hours'.

Schedule B.4.2 – Full-time and part-time piggery attendant adult employees – shiftworkers – ordinary and penalty rates

42. As set out above, we do not support the introduction of a new 'non-successive shift' term.

Schedule B.4.4 – Casual piggery attendant adult employees (all employees including shiftworkers) – ordinary and penalty rates

43. In response to the AWU's submission we support the exclusion of shiftworkers and introduction of a 225% Sunday column provided that the table heading reads 'Sunday – overtime hours'.

Schedule G - Definitions

44. We note the AWU submission which would alter a longstanding provision of the Award. While we do not support the AWU submission, in our view the definition of continuous service could be revised to align more closely with the FW Act and the National Employment Standards as follows:

(Dot point 3) 'takes ~~long service leave~~, annual leave, personal/carers leave, public holidays, compassionate leave and community service leave; or'

Leading hand allowance

45. We agree with the submission of the Australian Federation of Employers and Industries. In our view, the leading hand allowance is payable on a pro-rata basis to part time employees consistent with clause 6.4(a)(iii) as it applies to clause 10.1(a)(i).

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