



# REPORT TO THE FULL BENCH

*Fair Work Act 2009*  
s.156 - 4 yearly review of modern awards

## **SILVICULTURE AWARD 2010** (AM2014/244) [MA000040]

DEPUTY PRESIDENT CLANCY

MELBOURNE, 25 AUGUST 2016

*Silviculture Award 2010*

### **SILVICULTURE AWARD 2010**

[1] A conference was held in Melbourne, with a video link to Sydney on 8 August 2016 attended by representatives of the Australian Workers' Union (AWU) and the National Farmers Federation (NFF). It was the first conference of substance held for this Award.

[2] The parties discussed the exposure draft of the *Silviculture 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] Proposed variations to the exposure draft that are agreed by the parties are summarised in Attachment A.

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

[5] Items from the Summary of Submissions which remain under consideration by the parties and may benefit from further discussions are summarised at Attachment C.

[6] Item 5 was withdrawn, save that it was agreed that sub clause 11.6(i) should be inserted into the table of facilitative provisions in clause 5.2.

[7] Items 47 – 49 relating to Schedule D will be dealt with in a separate Full Bench proceeding regarding National Training Wages and Item 50 will be dealt with in the Public Holidays Common issues proceeding.



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## **Attachment A**

Item 1 – delete the words “*as varied*” from sub clause 1.2.

Item 2 – the AWU is not opposed to the suggested wording of the NFF for clause 2.3:

*“The employer must ensure that copies of the award and the NES are available to all employees to whom they apply. This may be achieved by making them available electronically, on a noticeboard which is conveniently located at or near the workplace, or through some other reasonable accessible means.”*

Item 3 – place the definition of **silviculture and afforestation** in clause 3.2 only.

Item 4 – delete the words “*set out in clauses 3.1 and 3.2*” from clauses 3.3 and 3.4.

Item 7 – insert the word “*hours*” after “38” in clause 6.4(a)(i).

Item 9 – delete the last sentence “*These hours once fixed can only be varied by mutual agreement between the employer and the majority of employees whose hours will be affected*” from clause 6.4(b).

Item 10 – remove the word “*ordinary*” from the first sentence of clause 6.5(b).

Item 11 – amend the words of clause 8.2 to “*Ordinary hours of work must not exceed an average of 38 per week over an agreed and specified work cycle*”.

Item 18 – insert the words “*of termination*” after “*notice*” in clause 10.5(c)(i)

Item 20 – insert the words “*away from, and*” after the words “*on work*” in clause 11.4(b) so as to reflect the arrangements in the current Award.

Item 21 – replace the word “*at*” between the words “*An employee who is engaged*” and “*a business*” in clause 11.4(c)(i) with the words “*on work for*” so as to reflect the arrangements in the current Award.

Item 22 – correct typographical error in clause 11.4(d)(i) so that it reads “*the time outside ordinary working hours reasonably spent in such travel, calculated at the ordinary hourly rate to the next quarter of an hour with a minimum payment of half an hour per day for each return journey; and...*”.

Item 32 – change the words “*Saturday following Good Friday*” in clause 13.5(a)(ii) to “*Easter Saturday*”.

Item 33 – parties agree that clause 13.6(a)(i) applies if less than 2 hours of work are performed on the call-out and if more than 2 hours of work are required on the call-out, the entitlements in clause 13.6(a)(ii) apply.

Item 34 – change the words after the first comma in clause 14.11 to “*inclusive of time worked for accrual purposes as prescribed in clause 14.5*”.

Item 36 – insert the words “*Despite clause 15.11(e)*” at the start of clause 15.11(f).

Item 37 – replace the word “hours” at the end of clause 15.14(a) with “*time that occurs during the break*”.

Item 38 – the wording of clause 16.4 will be changed as a result of the Annual Leave Common issue decision.

Item 40 – the word “*all*” should be deleted from clause A.1 in Schedule A

Item 42 – the column headed “*5 successive shifts*” in Table A.2.3 in Schedule A should be renamed “*less than 5 consecutive shifts*”.

Item 51 - The definition of **silviculture and afforestation** should be removed from Schedule F and placed in clause 3.2 only.

## **Attachment B**

Item 6 – The AWU proposal to insert the word “*ordinary*” between “38” and “*hours*” in clause 6.3.

Item 8 - The AWU proposal to have clause 6.4(a)(i) read “*is engaged to work less than 38 ordinary hours*”.

Item 19 – The AWU argues that the leading hand allowance in clause 11.3(b) should be payable regardless of the employee’s normal rate of pay. The NFF position is that the exposure draft reflects the current award and it is clear that the leading hand allowance should not be payable to an employee if his/her rate of pay is higher than the combined total of the leading hand allowance and the weekly wage rate of the highest classification of employee being supervised.

## Attachment C

Item 12 – the parties will have further discussions and the NFF will consider the AWU proposal that when an employee has to defer a meal break, he or she will continue to receive the rate he or she was on for working ordinary hours plus 100% of the ordinary hourly rate.

Item 13 – the parties are working towards wording that will provide that the pre-overtime crib break provided for in clause 9.3(b) is not paid at the overtime rate.

Item 14 – the parties will discuss whether clause 10.2 is necessary.

Item 15 - the parties will discuss whether references to “*actual*” rates should be changed to “*ordinary*” rates.

Item 16 – the parties will further discuss their respective versions of proposed wording for clause 10.4(a).

Item 17 - the parties will further discuss their respective versions of proposed wording for clause 10.4 dealing with pieceworkers.

Items 23 and 24 – further discussions to be had on the cross references referred to in clauses 11.4(f)(i), 11.4(f)(iv) and 11.4(f)(v) in furtherance of the desire of the parties to preserve the status quo.

Item 25 – further discussions to establish whether clause 11.4(l)(iii) simply replicates clause 11.4(f)(ii) and can therefore be deleted.

Items 26–30 - further discussions to be had on clauses 11.6(a)(i), 11.6(c)(iv), 11.6(d), 11.6(d)(iv) and 11.6(e) within clause 11.6, in furtherance of the desire of the parties to preserve the status quo.

Item 31 – parties will have discussions to see if the wording in clause 13.3(a) could be amended so it is clear that there will be a break of at least 10 consecutive hours after periods of overtime.

Item 35 – not agreed, but parties will discuss the Monday to Friday payment for Bushfire fighting further.

Item 39 – parties to discuss the rate upon which the 17.5% annual leave loading should be applied.

Item 41 – the AWU seeks the inclusion of bushfire fighting rates in the rates of pay for shiftworkers in Table A.2.3 of Schedule A. Item likely to be resolved if item 35 can be resolved.

Item 43 – parties to discuss further whether there should be a Sunday rate for full-time and part-time shiftworkers and its quantum.

Item 44 – parties will discuss the issue of overtime rates for casual employees upon the AWU submitting a table of proposed rates for inclusion in Schedule A.

Item 45 – resolution of this item is linked to the resolution of item 35.

Item 46 – resolution of this item is linked to the resolution of item 43, but the question of whether there should be a Sunday rate for casual shiftworkers and its quantum may remain a dispute of substance.