

4 yearly review of modern awards – Silviculture Award

Matter No. AM2014/244

**FURTHER SUBMISSIONS ON EXPOSURE DRAFT –
SILVICULTURE AWARD 2016**

NATIONAL FARMERS' FEDERATION

Date: 24 November 2017

1. The National Farmers' Federation 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 responds to Directions for further submissions on various issues as set out in the Decision of the Fair Work Commission Full Bench dated 30 October 2017 (the Decision).¹

Items 6 and 8 – Definition of full-time and part-time employees

1. Should the AWU be minded to pursue this issue, the NFF remains opposed to the insertion of the word 'ordinary' into clauses 6.3 and 6.4(i). We are not opposed to the wording proposed by the Commission at paragraph [347] of the Decision.

Item 15 – Actual Weekly Rate

2. The NFF supports the provisional view of the Commission as set out in its decision of 3 November 2017.

Item 19 – Leading hand allowance

3. The NFF supports the Commissions' provisional view than the reference rate in clause 11.3(b)(i) should be changed to 'ordinary weekly rate'.
4. However, the NFF presses its submission in relation to the calculation of the rate of pay. The NFF submits that the intent of "leading hand allowance" is to provide an employee who supervises other employees with an additional allowance if his/her ordinary rate of pay does not already include a component in recognition of those supervising responsibilities. If the rate already has such a competence "built-in" then the employee should get his/her "own rate" as currently provided for in clause 11.3 of the exposure draft. That may be assumed where he/she is already earning significantly more than the employees which he/she supervises. It may be observed that the grade 5 and 6 classification apply to employees who are "in charge": clauses 7.5 and 7.6. Indeed, the fact of being "in charge" is the essential element of that classification — if they are not "in charge" then they fall within grades 3 or 4 — and therefore the additional duties and responsibility which accompanies supervising other workers is

¹ [2017] FWCFB 5536.

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clearly built into the increase in wage. They should not also get the leading hand allowance; effectively, “double dipping”.

5. This interpretation is clearly supported by the drafting of the modern Silviculture Award 2010. Furthermore, with respect the NFF contends that it is also the correct interpretation of clause 3 of the pre-modern award which the Commission cites at clause [377] of the decision. In our view the alternative pay rates under that clause were “the undermentioned amounts above the rates of the highest classification supervised” or “his own rate”, whichever is higher. The placement of the commas around “his own rate”, irrespective of whether it is grammatical correct, supports this view.

Items 43, 45 and 46 – Shiftworkers and casual shiftworkers – Sunday rates

6. The NFF does not oppose the Commission’s provisional view.

Item 44 – Overtime rates for casual employees

1. The NFF accepts the Commission provisional view that any casual loading would be cumulative with the overtime allowance, but would not compound with the overtime allowance.

Conclusion

2. We note that some items have been referred to a separately constituted Full Bench and await further instructions in relation to these.

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24 November 2017