

4 yearly review of modern awards
Award stage – Horticulture Award 2010
Matter No. AM2016/25

SUBMISSION IN REPLY

NATIONAL FARMERS' FEDERATION

Date: 21 April 2017

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. On 12 September 2016, the Fair Work Commission (**Commission**) filed Directions instructing proponents of variations to the *Horticulture Award 2010* (**Horticulture Award**) to file comprehensive written submissions and any evidence upon which they seek to rely by close of business on 19 December 2016. Parties were further instructed that written submissions and evidence in reply are to be filed on 7 April 2017. An extension for filing was granted to parties until Friday 21 April 2017.
3. This submission responds to those Directions. It opposes the claim by Australian Industry Group (**Ai Group**) to vary the definition of "horticulture crops" in clause 3 of the Horticulture Award and the exclusion in clause 4.3(f).
4. The NFF takes the view that the changes proposed by Ai Group will have the effect of including traditional pastoral farming operations under coverage of the Horticulture Award and effectively excluding them from the *Pastoral Award 2010* (**Pastoral Award**) by interpreting a "broadacre mixed farming enterprise" as a farm which grows crops and produces livestock *simultaneously*. Such a result has never been the intention of coverage under either award.

History of Horticulture Industry Award Coverage

5. Federal award coverage of the horticulture industry commenced with the *Fruit Growing Industry (Consolidated) Award 1976*. The scope of this Award was set out at clause 3:

This award shall apply to the employment of persons in or in connection with the fruit growing industry, that is to say in or in connection with the cultivation, picking, packing and forwarding of fresh and/or dried fruits, the cultivation and picking of

canning fruits and the dehydration or crystallisation of stone fruits, dried vine fruits and vegetables and without limiting the generality of the foregoing shall include persons engaged on any work carried on or in connection with a vineyard, including work in connection with the preparation of the vineyard for market.

6. In 1995, the *Fruit and Vegetable Growing, Storing, Packaging and Processing (AWU) Award 1995* was created. The scope of this award was set out at clause 5:

This award shall apply to the employment of persons in or in connection with the fruit growing industry, that is to say in or in connection with cultivation, picking, dehydration, crystallisation, washing, juicing, canning and all other processing, storing, packing and forwarding of fruits and vegetables. Without limiting the generality of the foregoing, the scope includes persons engaged in any work carried on in connection with a vineyard, including work in connection with the preparation of the product of the vineyard for the market. Where employers are bound by the Federal Pastoral Industry Award 1986, agreement should be expressly reached as to whether this award is to apply.

7. This award then became the *Fruit and Vegetable Growing, Storing, Packing and Processing (AWU) Award 1999* and in 2000, the *Dried Fruits and Other Fruits Industry (AWU) Award 1999* and the *Fruit and Vegetable Growing, Storing, Packing and Processing (AWU) Award 1999* were consolidated to form a new award, the *Horticultural Industry (AWU) Award 2000*.
8. The current Horticulture Award was derived from that award as it applied to Schedule B and C respondents:

all persons employed by them in Australia in the fruit and vegetable growing industry, including persons engaged in, or in connection with:

- (a) The cultivation, picking, dehydration, crystallisation, washing, juicing, canning, or any other processing, of fruits and vegetables;
- (b) The storing, packing, or forwarding of fruits or vegetables; or
- (c) The preparation of vineyard products.

9. This award history shows that coverage of the pre-award modernisation horticulture awards was originally restricted to the growing of fruits and vegetables until 2010 when the current award was created. The *Horticulture Award 2010* extends coverage of crops to “vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers; or other specialized crops unless they are specifically named as a broadacre field crop in the *Pastoral Award 2010*.”

History of Pastoral Industry Award Coverage

10. An accurate picture of the development of the Horticulture Award coverage cannot be obtained without also looking to the history of the *Pastoral Award 2010* and its predecessor, the *Pastoral Industry Award 1998*.

11. The *Pastoral Industry Award*, formed in 1907, was originally restricted to activities that related to the production of livestock. It was not until 1967 that the scope clause was widened to cover:

employment of members of the Australian Workers' Union employed by respondent employers in connection with the management, rearing or grazing of sheep, cattle, horses or other livestock, the sowing, raising or harvesting of crops, the preparation and treatment of land for any of these purposes, and the shearing or crutching of sheep.

12. The widening of the scope clause was in response to claims by the NFF seeking a positive scope clause which was designed to cover all the activities of its members and which gave recognition to their agricultural pursuits.¹ From this, it was evident that the award had a wide coverage of both pastoral and agricultural activities and covered the running of all livestock and the growing etc. of all crops. At this time, the only limitation on coverage was any limitation contained in the constitution and rules of respondent organisations.

13. The history of award coverage in the pastoral industry has been set out in *Seery*,² where it was argued by the Australian Workers' Union (AWU) that the *Pastoral Industry Award* was never intended by the Award parties, nor designed or understood, to apply to intensive stock and cropping operations such as cotton.

14. Deputy President Sams provided an overview of Pastoral Award coverage:

42 The *Pastoral Industry Award* has had a long, colourful, and sometimes, turbulent, history. First made by *O'Connor J* in 1907, 1 CAR 52, it is manifestly obvious that its history has been accompanied by an evolutionary and expansive extension of its scope and coverage. There are obvious points at which, it might be said, each step in the evolution can be identified.

43 It is apparent that the 1907 Award was an industrial instrument limited to shearing and associated work. At [1907] 1-2 CAR 62 the reference at p62 describes the Court as making an "*Award settling the conditions of employment and rates of pay of shearers, shed hands, woolpressers and shearers' cooks*".

44 The 1911 Award made by *Higgins, J* continued the limited scope of the Award to shearing and related occupations. Interestingly, *Higgins J* rejected a claim for the Award to be extended to station hands on the basis that the Court was not satisfied that the station hands were in dispute with their employers, (5 CAR 48).

45 The first step at expanding the coverage of the Award is found in the 1917 Award, following a finding, by the High Court, of a dispute between the union, on behalf of station hands, and respondent employers (23 CLR 22).

¹ 121 CAR 456

² Australian Workers Union (AWU), New South Wales v WH & A Seery (Industrial Relations Commission of New South Wales, Matter IRC 1848 of 2000.

46 Thus, in the judgment of *Higgins J* in 1917, the Award, for the first time, was expanded to cover station hands.

47 In the 1927 Award proceedings, *Dethridge CJ*, was faced with a union claim to extend the Award to station hands in Tasmania and Western Australia, where they had not previously been covered. The court extended coverage to Western Australia, but not Tasmania. Another intriguing claim, advanced by the union in this case, was to extend the definition of station hand to employees engaged:

“... at the occupations of blacksmiths, carpenters, fenders, axemen, pick and shovel men, rabbit poisoners, concrete mixers, bare rain delvers, irrigation labourers, horse or bullock drivers, burr, thistle or prickly pear cutters or drovers" (25 CAR 687).

While this claim was rejected, it is nevertheless clear, from the gamut of occupations just cited, that the union, at that time, was not the least bit content with the Award being restricted to shearing, and shearing related work.

48 It is relevant to note that the Court made sure that the Award was so limited by the exclusion in clause 31:

This Award shall not (except in New South Wales) apply -

1. To any employer unless his main or predominant work is as a pastoralist raising and/or shearing sheep in the ordinary way.
2. To any sheep-farmer, or any other farmer, unless his main or predominant work is that of raising and/or shearing sheep.

49 The Award was therefore limited (except in New South Wales) to pastoralists as employers, and farmers whose "*main or predominant work*" was that of "*raising and/or shearing sheep*". The exception in New South Wales related to a state Award which exempted employers from the Award where the employer owned less than one thousand sheep.

50 The most notable extension of the Award coverage, apropos to this case, is to be found in a 1967 decision of Commissioner *Donovan* at 121 CAR 454. Here, for the first time, the scope of the Award refers to the "*sowing, raising and harvesting of crops*". Ironically, the scope of the Award was said to have been re-written for the purposes of clarity. At p456 the Commissioner said:

The provisions of the current award clauses covering 'Definitions and Interpretations' and 'scope' have been re-written for the purposes of clarity.

The scope of the Award has been widened and it will now cover employment of members of the Australian Workers Union (hereinafter referred to as the 'Union') employed by respondent employers in connection with the management, rearing or grazing of sheep, cattle, horses or other livestock, the sowing, raising or harvesting of crops, the preparation and treatment of land for any of those purposes, and the shearing or crutching of sheep.

51 This "widening" of the Award scope does not appear to have been contested. While other aspects of the Commissioner's decision were subject to appeal, on this point, there was no complaint, 121 CAR 506.

52 It is open therefore to conclude, particularly as the Commissioner intended the objective was to clarify the Award's scope, that he was doing no more than recognising the existing understanding of what the Award covered. In this conclusion, there must have been the acceptance of the parties to the Award, or at the very least, their acquiescence.

53 Consistent with these observations, is the fact that the earlier references to the award only applying to pastoralists or farmers whose main or predominant work is the "*raising and/or shearing of sheep*", has now disappeared.

54 I postulate this question - is it reasonable to conclude, therefore, that a farmer or pastoralist whose predominant work is not shearing, is able to be covered by the *Pastoral Industry Award* Assuming, that the work is otherwise captured by the scope of the Award, I think it must be logically so.

15. Continuing:

60 At page 213 the Full Bench said:

In the 1970 proceedings reference was made to the fact that the award was very limited in its legal effect, although it was used by graziers generally as the basis for the payment and conditions of work for all station hands.

61 and at p214:

This award is used by the employers to cover many thousands of station hands on many thousands of properties on which are grown sheep, wheat, cattle and other kinds of animals and crops. It covers many areas from the high rainfall areas of the coast and tablelands to the wheat sheep zone and to the dry pastoral zone. It operates in New South Wales, A.C.T., Victoria, Tasmania, South Australia and Western Australia with all the variety that such a coverage can bring. In brief the nature of this award makes very difficult and adoption of provisions reasonably suitable for all circumstances.

62 These observations make it palpably clear, that the Award was being applied generally and was used by employers to cover "*many thousands of station hands*" on rural properties, not limited to sheep, or cattle stations, and including properties which grow "crops".

63 Such global observations must reinforce a wide practice in the industry - a practice Mr *Young* submits, does not, and has not existed. He submitted that the correct definition of station hand is limited to work on a sheep or cattle station. Such a submission is unsustainable when measured against the Full Bench's comments in 1971. I emphasise the expression that the Award operates "*with all the variety that such a coverage can bring*".

16. It was concluded that cotton is a crop within the meaning of the Pastoral Award.

17. None of the pre-2010 awards specified the type of crops that could be grown on a broadacre farm. Nor did these awards require that coverage of a cropping enterprise was restricted to an enterprise that also grazed livestock. An overview of the coverage clause in each of the pre-reform awards is included at **Attachment A**.

18. There has long been some overlap between the Pastoral and Horticulture industries as explained by the NFF submission to the Australian Industrial Relations Commission on 24 November 2008:

46. In particular, overlap occurs in the vegetable sector where vegetables are grown as a part of a rotation with other crops covered by the PIA or in conjunction with the grazing of livestock.

47. The HIA has always recognised the potential for overlap. Clause 6.3 provides as follows:

“Where an employer bound to this award is also bound by the Pastoral Industry Award 1998, agreement will be reached with employees as to whether this award is to apply.”

.....

49. NFF submits that whilst it would be desirable to avoid overlap between modern awards, if there is going to be a modern award for agriculture and a modern award for horticulture, overlap is inevitable given the nature of the farming industry.

50. NFF strongly submits that the question of overlap cannot be resolved by drafting of a coverage clause without increasing the number of awards which will apply at the workplace.

51. Further NFF submits that the question of overlap should continue to be addressed as it has been addressed successfully in the past by the two principal federal awards.

19. In 2002 Commissioner Whelan dealt with the issue of overlap between awards when looking at coverage of the *Storage Services Fruit Packing (Victoria) Award 1994* in 2002 in relation to the *Horticulture Industry (AWU) Award 2000*:

*“while there is clearly the potential for issues to arise concerning coverage of the two awards that in itself does not justify the Commission effectively extending the area of exclusion of the NUW Award as part of an Item 51 review. Arguably, the *Horticultural Industry (AWU) Award 2000* and the *Food Preservers Award 2000* may also have areas of overlapping coverage. In such circumstances, as in this case, the issue involves determining in any particular circumstances which award should apply.”*

Award Modernisation

20. During Award Modernisation there was much discussion about the overlap between the Pastoral and Horticulture Awards. Emphasis was placed on the need to exclude horticultural crops grown in rotation with other broadacre cropping activities from coverage of the Horticulture Award.

21. In a submission to the Fair Work Commission on 31 October 2008, First IR Consultancy (representing a number of agricultural interests) submitted:

9. What we want the Commission to be particularly mindful of is the absolute importance of allowing the whole agricultural industry to be able to continue its long record of innovation, change, development and renewal, and to ensure that the industrial regulation that exists, for the benefit of all parties, is sufficiently flexible to allow for the necessary changes of direction, style and content that so mark the history of agriculture in Australia.

10. This is why we advocate that a new 'Pastoral award' incorporating the Cattle industry should be able to cover activities that are not only the current principle activity of the property, but that are real and could one day become the major activity of that farm.

11. As an example of this type of innovation and diversification, We say that the growing of "some" trees, shouldn't make a farm an orchard, nor a forest. We say that producing a few trout doesn't make you an aquaculturalist and so on.

22. First IR proposed a definition of "Horticulture" as:

Horticulture, including orcharding, is the growing, propagating and nurturing of plants and trees for the production of fruit, vegetables, nuts and berries, but not in a rotation system for the purpose of soil nutrition enhancement for grasses, or cereal crops.

23. The AWU argued that the range of horticulture crops grown were too extensive to delineate with an exhaustive list and argued that broadacre field crops could instead be defined in an exhaustive manner to delineate coverage.

24. In its submission of 31 October 2008, the AWU proposed the following definition for horticultural crops:

horticultural products and crops includes all vegetables, all fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops unless they are specifically named as a Broadacre Field Crop in the Agricultural Industry Award 2010.

25. And the following definition for "broadacre field crops:"

"Broadacre Field Crops means canola, wheat, hay, barley, oats, triticale, sorghum, maize, millets, which are not crops or products falling within the scope of the Horticultural Industry Award 2010."

26. In that same submission it sought to define "Agricultural Industry" as:

4.3 Agricultural Industry means all employers and employees who are engaged in or in connection with:

- (a) the management, breeding, rearing or grazing of livestock or poultry; or

IN THE FAIR WORK COMMISSION

- (b) dairying; or
- (c) hatchery work; or
- (d) the sowing, raising or harvesting of Broadacre Field Crops, the preparation and treatment of land for any of these purposes; or
- (e) collecting, grading, preparation for packing, packing, forwarding of Broadacre Field Crops and livestock products; or
- (f) clearing, fencing, well sinking, dam sinking or trenching on such farms or properties in connection with work in 4.3(a) to 4.3(e).

27. Notably, the AWU definition acknowledges that broadacre field crops may be grown as a monoculture or as a cropping only enterprise.

28. In its submission of 31 October 2008 the NFF proposed the following definition of crops in its draft Agriculture Award:

Crops includes grains, seeds, hay, silage, vegetables, cotton, flowers, silviculture and other specialised crops.

29. The Agricultural Industry was defined by the NFF as:

4.2 For the purpose of clause 4.1 Agricultural Industry includes:

- (a) the management, breeding, rearing, raising, grazing, feeding, milking and forwarding of livestock and livestock products; and
- (b) shearing and crutching and the classing of wool;
- (c) and the sowing, raising, harvesting, grading, preparation for packing, packing and/or forwarding of crops and livestock products; and
- (d) the preparation and treatment of land or other growing medium for any of the purposes contained in clauses 4.2(a) and 4.2(c).

30. A specific exclusion was proposed for vegetables “not produced as part of a broadacre mixed farming enterprise” to delineate coverage of the Agricultural (Pastoral) and Horticulture Awards.

31. The NFF further proposed the following definition for the Horticulture Industry Award:

Horticultural products includes fruits, vegetables, hops, nuts, mushrooms, olives and other specialised horticultural products

32. An exclusion was inserted for “vegetables grown in conjunction with or as a part of a rotation with activities covered by the Agricultural Industry Award.”

33. In its submission of 24 November 2008, the Horticulture Australia Council proposed that the Horticulture industry be defined as follows:

Horticulture industry means the principal business of the employer involved in the growing of vegetables, fruits, seeds, hops, nuts, fungi, olives, flowers or other specialised crops and work associated with the above.

Horticulture products and crops includes all vegetables, all fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops.

34. The Horticulture Australia Council also proposed an exclusion for vegetables grown for the purpose of crop rotation or nitrogen fixing.

35. It proposed the following clause for dealing with overlap between awards:

4.5 Where an employer is engaged in more than one industry to which an industry award applies an employee of that employer is deemed to be in the classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work, regardless of the industry award in which the classification appears.

36. On 24 November 2008 the AWU changed its proposal for the definition of horticultural crops and introduced the concept of a broadacre mixed farming enterprise:

Crops includes grains, seeds, hay, silage, vegetables where they are produced as part of broadacre mixed farming enterprise, flowers, and other specialised agricultural crops.

37. Importantly, the connection to mixed farming only applied to vegetables, as it did in all of the AWU's proposals going forward.

38. On 10 December 2008, following a hearing in late November, the NFF proposed a new definition for horticultural crops:

horticulture products and crops includes all types of vegetables and fruits (including Viticulture/grapes (dried, table and wine) and olives), herbs, horticulture seeds, hops, nuts, fungi and other specialised horticulture crops.

39. Discussions in the transcript of 12 December 2008 show that the term "other specialised crops" was envisaged as a catch all phrase, framed by the listed crops in the definition.

40. On 23 January 2009, the Horticulture Award 2010 exposure draft released by the Commission contained the following definition:

horticultural crops includes all vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops unless they are specifically named as a broadacre field crop in the *Pastoral Industry Award 2010*.

41. In that same exposure draft, the exclusion at clause 4.3(f) was "a broadacre mixed farming enterprise as defined in the *Pastoral Award 2010*." This is the clause that was ultimately included in the final award.

42. Following the release of the Pastoral Award exposure draft, the NFF raised concerns in its submission of 13 February 2009 about proposed definitions for “broadacre field crops” and “broadacre mixed farming enterprise”. Agreement was noted between the AWU and NFF to insert “other specialized agricultural crops” at the end of the definition. The NFF’s proposed definition was:

Crops includes grains, seeds, hay, silage, vegetables, cotton, flowers and other specialised agricultural crops’.

43. In its submission on the same date, the AWU proposed:

Crops includes grains, seeds, hay, silage, vegetables where they are produced as part of a broadacre mixed farming enterprise, flowers, and other specialised agricultural crops.

44. In the submission of 13 February 2009 the NFF raised concerns about coverage of rice by the Pastoral Award:

Rice growing as a monoculture will not be covered by the Exposure Draft PIA as it will not be part of a broadacre mixed farming enterprise which by definition requires it to be grown in addition to or in conjunction with either livestock or other broadacre field crops as defined.

45. The NFF proposed the removal of the definition of “broadacre mixed farming enterprise” and all references to it in the award.
46. This suggests that while there were concerns about a single crop falling outside of the definition of broadacre field crops, there was clearly an assumption at the time that a cropping only enterprise would be covered where there was more than one broadacre crop grown by the Pastoral Award.
47. In the AWU submission dated 13 February 2009, it was submitted that rice should be added to the definition of broadacre field crop as it is clearly not a horticultural crop.

In addition to the crops listed in the exposure draft at clause 3.1 the AWU submits that rice should be added to the “definition of broadacre field crop” as it is a crop which should correctly fall under the definition of “broadacre”. Rice is not a “horticultural crop” under the Exposure Draft Horticulture Award 2010 at clause 3.1.

48. The assumption that a “broadacre mixed farming enterprise” could include a cropping only enterprise underpinned all of this discussion during award modernisation and again in 2015 when the NFF made a claim to broaden the broadacre field crop definition.³ It also appears to have been accepted by the AWU.
49. In a later submission of 10 March 2009, the NFF expressed concern about the inclusion of “grains, seeds and flowers” in the definition of horticultural crops in the

³ [2015] FWCFB 8810.

Horticulture Award 2010 exposure draft, suggesting that this would create inappropriate overlap as each of these are agricultural crops.

50. The ongoing discussion about overlapping award coverage during award modernisation can be summarised as follows:
- (a) It was always assumed that the definition of “broadacre mixed farming enterprise” included broadacre farming enterprises engaged in cropping only.
 - (b) Award history shows that many single cropping enterprises such as grain only, rice only or cotton are covered by the Pastoral Award. There is no reason why this should not be extended to new crop varieties as they emerge.
51. There is no justification to limit the coverage of the Pastoral Award so that crops are only covered if grown together with the rearing of livestock.
52. In summary, historical analysis of award coverage before and during award modernisation shows:
- (a) Horticulture was originally just fruit and vegetables;
 - (b) It was always intended that broadacre cropping be covered by the Pastoral Award: and
 - (c) It was always assumed that this could include a cropping only enterprise.

Broadacre Farming in Australia

53. A “Broadacre Mixed Farming Enterprise” is defined in the Pastoral Award 2010 as:

broadacre mixed farming enterprise:

- means a farming enterprise consisting of the growing of broadacre field crops as defined;
- includes the rearing, management, and grazing of livestock;
- means a farming enterprise which combines both; or
- means a farming enterprise which in addition to any of the above grows other crops, for the purposes of crop rotation or the rearing, management, and grazing of livestock as part of a mixed farming enterprise

54. It is our view that the literal meaning of this term suggests that a broadacre farming enterprise encompasses the following types of enterprises:

- (a) A farming enterprise which grows broadacre field crops; or
- (b) A farming enterprise which engages in the rearing or management of livestock, or

- (c) Both of the above; or
- (d) An enterprise that grows crops other than broadacre field crops, such as vegetables, in rotation with broadacre field crops or livestock production.

55. The use of the word “includes” at the start of the second dot point does not have the effect of making the points cumulative, rather it confirms that a farming enterprise that rears, manages and grazes livestock is a broadacre mixed farming enterprise in a standalone capacity. This means that a broadacre mixed farming enterprise includes a range of different properties such as:

- (a) A large property that grazes livestock such as cattle, sheep, goats, buffalo on native grassland.
- (b) A farming enterprise that grazes cattle and/or sheep and undertakes some pasture improvement.
- (c) A farming enterprise that grows grain or other crops in rotation and grazes livestock such as cattle, sheep, goats or buffalo.
- (d) A farming enterprise that grows broadacre field crops exclusively.
- (e) A farming enterprise that grows some vegetables in rotation with broadacre field crops.
- (f) A farming enterprise that grazes cattle and may grow some broadacre field crops and/or vegetables.

56. Pasture improvement is a sown pasture that includes introduced pasture species, usually grasses in combination with legumes. These are generally considered “more productive than local native pastures, have higher protein and metabolisable energy and are typically more digestible.”⁴

57. In a fact sheet developed by the Fair Work Ombudsman and the NFF (**Attachment B**) the uncertainty around the term “broadacre mixed farming enterprise” was noted:

As the term “broadacre mixed farm enterprise” is new and has not been tested in the courts it is strongly recommended that if a farmer is unsure as to whether the Pastoral Award 2010 applies or not, they seek advice from their industrial association, legal advisor or Fair Work Infoline on 13 13 94.

58. Many enterprises in Australia that undertake broadacre cropping will also have livestock grazing as this can be a productive way to use the land. It enables diversification of income and can be performed in rotation with cropping practices.

⁴ Meat and Livestock Australia, *Improved Pasture*, <https://www.mla.com.au/research-and-development/Grazing-pasture-management/improved-pasture/>.

Some crop varieties can be grazed in the early stages of their growth. See, for example, Naparoo and Wedgetail wheat, Endeavour Triticale and Urambie Barley.⁵

59. At any given time, particular business pressures or other circumstances may arise that mean a farm does not graze livestock alongside cropping operations, known as continuous cropping, including:

- (a) Seasonal and climate variables.
- (b) Increased knowledge of disease together with technological advances have made crop choices more flexible.⁶
- (c) Pest and disease risk can be managed by pasture or legume phases.⁷
- (d) Impact of livestock on soil quality can affect crop performance.
- (e) Farm infrastructure.
- (f) More efficient use of cropping land can be achieved when fences and other livestock infrastructure are removed.
- (g) Water availability.
- (h) Supply chain disruption, for example, the live export ban which shut down the industry overnight forcing property owners to destock for animal welfare reasons.
- (i) Market fluctuation - high prices for a particular commodity may favour higher investment in a particular commodity while an oversupply in the market will tend to push production away from one commodity to another.
- (j) Personal preference.

60. Witness statements of Barbara Grey, David McKeon and Jeremy Morton attached to this submission provide further detail on the reason for enterprises engaging in broadacre cropping only, or mixed cropping/livestock.

61. Where a business is cropping only, they will often grow a mixture of crop types and practice rotation of crops from one paddock to another over several years. In itself, this could answer to the description of a “mixed farming enterprise” as demonstrated by the discussion above about award modernisation. However, these crops can also be grown as a monoculture in some years and the work conditions do not change.

⁵ Baker Seed Company, *2016 Winter Grazing Wheat, Barley & Triticale*, <http://bakersedco.com.au/2016-winter-grazing-wheat-barley-triticale/>.

⁶ Price Waterhouse Cooper (2011), *The Australian Grains Industry – The Basics*, <https://www.pwc.com.au/industry/agribusiness/assets/australian-grains-industry-nov11.pdf>.

⁷ Ibid.

62. It is custom and practice within the farming industry to describe broadacre farming as a farming enterprise that may be livestock only, cropping only, or livestock and cropping combined.⁸ Various indicators are used to categorise the different types of crops, as the examples below show:

- (a) The Australian Bureau of Statistics separates “crops” from “horticulture” as shown in the table below.⁹ This is by no means an exhaustive list of crops in either industry but rather shows some of the statistically significant crops currently grown in Australia. It clearly suggests that there is a well-understood distinction between the two industries.

Horticulture (ABS)	Broadacre Crops (ABS)
Avocados	Wheat for grain
Cherries	Oats for grain
Mangoes	Barley for grain
Nectarines	Grain sorghum
Olives	Maize for grain
Peaches	Triticale for grain
Apples	Cotton lint
Mandarins	Canola
Oranges	Sugar cane cut for crushing
Pears	
Almonds	
Macadamias	
Bananas	

⁸ See for example, Witness Statement of Barbara Grey, 19 April 2017.

⁹ ABS *Agricultural Commodities*, Australia 2014-15, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/7121.0>.

Pineapples	
Strawberries	
Grapes	
Beans	
Capsicums	
Carrots	
Melons	
Mushrooms	
Onions	
Potatoes	
Tomatoes	

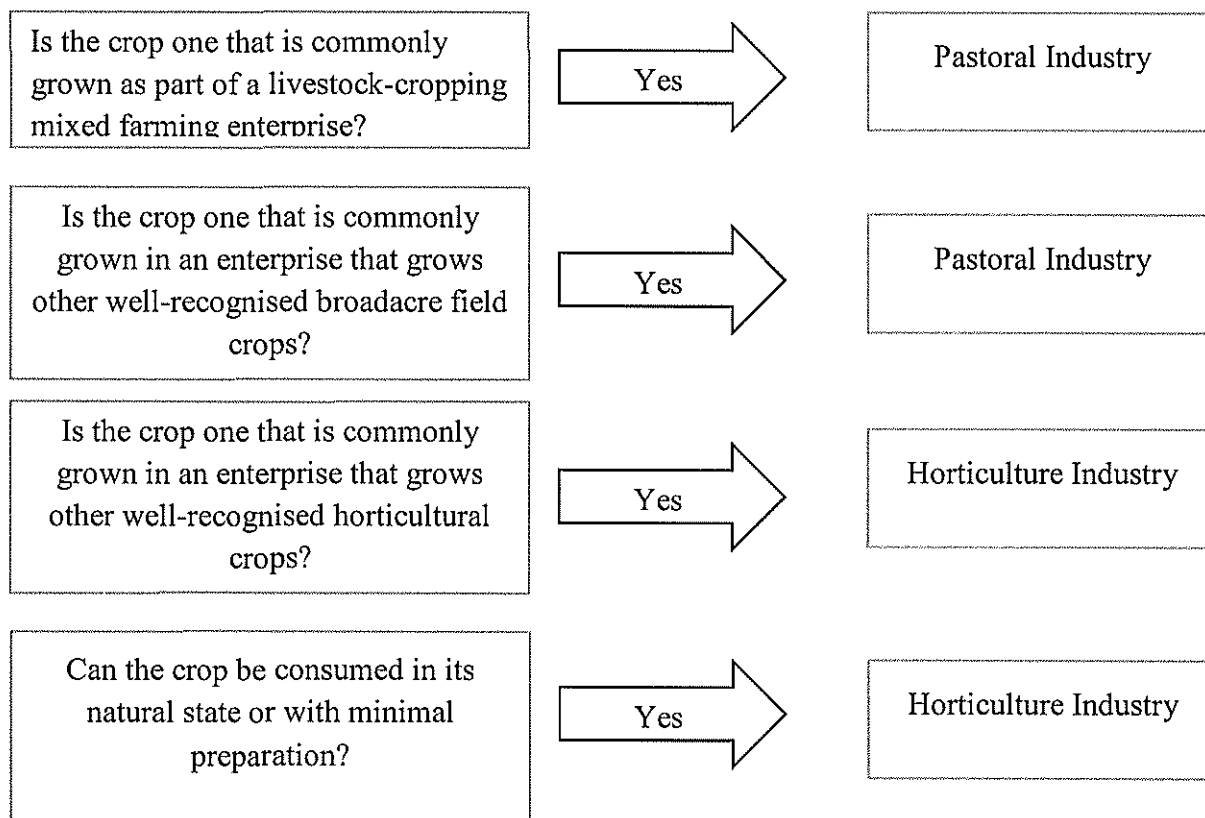
- (b) The Australian Industrial Relations Commission has previously examined ABS data in a way which distinguishes between the categories “wheat and other crops”, “mixed livestock-crops”, and “sheep, beef and sheep-beef industries” when examining farm cash flow in the calculation of wage rates for the Pastoral Industry Award 1986.¹⁰
- (c) The NSW Department of Primary Industries has separate guides for “broadacre crops”, “horticulture” and “pastures and rangelands”. It lists crops such as apples, pears and other pome fruit, berries, cherries, peaches and other stone fruit, citrus, grapes, nuts olives and olive oil, tropical fruit, vegetables, figs, monstera deliciosa, persimmon and pomegranate as horticultural crops. Broadacre crops are listed as winter crops such as barley, canola, chickpeas, faba beans, field peas, lupins, oats, safflower and wheat, and summer crops such as rice, sorghum, cotton and other fibre crops as well as forage and fodder crops such as burgundy bean, forage brassicas, forage sorghum and millet, sulla, cowpeas, lablab, soybeans, tagasaste, legume and oat forages.¹¹

¹⁰ P143 Dec 2016/90 M Print J1761, Justice Maddern, Deputy President Marsh and Commissioner Merriman, 20 March 1990.

¹¹ NSW Department of Primary Industries <http://www.dpi.nsw.gov.au/agriculture/broadacre-crops>.

(d) A similar distinction is made in Victoria.¹²

63. The chart below contains some indicators that could assist where there is some confusion about which award a crop falls under. Of course, these are indicative only and there may be exceptions in each case.



64. An exhaustive definition of either horticultural crops or broadacre field crops cannot be identified with any precision, including that:

- (a) New crop types are emerging in both industries. This is essential for the industry to maintain competitiveness through innovation.
- (b) There may be some overlap in the broad categories of crops. For example, sunflower seeds can be grown for the flower, for the seed or for the oil.

65. Modern awards must remain flexible and responsive in an industry that is, and always has been, adaptive, innovative and committed to ongoing productivity through research and development.

The Ai Group Claim

66. Ai Group have made a claim to vary the definition of “horticulture crops” in clause 3 of the Horticulture Award by:

¹² Agriculture Victoria <http://agriculture.vic.gov.au/agriculture/horticulture>.

- (a) Deleting the definition of ‘horticultural crops’ in clause 3 and inserting a new definition as follows:

Horticultural crops includes all vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops.; and

- (b) Deleting paragraph 4.3(f) and inserting a new paragraph 4.3(f) as follows:

(f) a broadacre mixed farming enterprise which combines the growing of crops and the management, breeding, rearing or grazing of livestock.

67. The NFF does not support the claim. It will have the unintended consequence of excluding broadacre farms that are only engaged in broadacre cropping from longstanding coverage under the Pastoral Award and instead move them into the Horticulture Award.
68. Ai Group argue that a broadacre mixed farming enterprise, within the meaning of the *Pastoral Award 2010 (Pastoral Award)* is a farm which “combines the growing of crops and the management, breeding, rearing or grazing of livestock.” The effect of this will be to limit coverage of the pastoral industry, where a crop is grown, to enterprises that have *both* livestock and cropping simultaneously.
69. This takes an unduly narrow construction of “broadacre mixed farming enterprise” and its practical consequence in itself shows that such a result is against the general understanding of these industries. Cropping only enterprises are not uncommon in the pastoral industry and innovation and flexibility is integral as farm businesses evolve, modernize and grow to maintain international competitiveness and remain viable. A landholder should be free to make the land use and production decisions that best suit their business. Awards need to be flexible in contemplation of this circumstance.
70. The changes proposed by Ai Group will have the effect of limiting diversification and pushing farms that engage in broadacre cropping without livestock production into the Horticulture Award, contrary to the longstanding award coverage of these industries.

The Case for Change

71. The NFF maintains that the *Horticulture Award 2010* should be left as is to preserve the status quo. The issue of coverage is complicated and is dealt with by clauses 4.6 and 4.9 in the Horticulture and Pastoral Awards respectively. To the extent that there is overlap or ambiguity, this clause establishes a process for resolving award coverage.
72. An attempt to add further clarity as to which crop is part of which industry risks an unjustifiably narrow definition that may unintentionally exclude less common or new crop varieties that are not at the forefront of industry knowledge at the present time.
73. If the Commission is of a mind to make changes in these proceedings, the NFF seeks the opportunity to be heard on any proposed changes before they are made.

74. Attempts to deal with this issue during award modernisation have shown that it is very complicated and warrants detailed consideration across the board with involvement of parties from both the horticulture and pastoral industries.
75. The recent changes to the Pastoral Award crop definition have not rendered the delineation of award coverage less clear. Rather they reinforce the broad range of crops that can be grown in both industries, neither of which can be listed exhaustively in any meaningful way.

The Modern Award Objective

76. 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 criteria including:
- (a) relevant 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));
 - (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)).
77. The modern awards objective applies to decisions made in these proceedings by virtue of section 134(2)(a) of the FW Act.

78. Section 138 of the FW Act states that a modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective.
79. The changes proposed by Ai Group are inconsistent with the modern awards objective and therefore should not be adopted.

Relevant living standards and the needs of the low paid (134(1)(a))

80. Relative living standards and the needs of the low paid are not directly impacted by the topic at issue. However changes to the awards that introduce a lack of flexibility in award coverage and do not accommodate for innovation and development in the horticulture and pastoral industries would restrict overall business development and stagnate growth in the industry. This would have a flow on impact on employment.

The need to encourage collective bargaining (s 134(1)(b))

81. This consideration is neutral.

The need to promote social inclusion through increased workforce participation (s 134(1)(c))

82. As above, changes to awards that reduce flexibility will stagnate growth and have a flow on effect on employment and workforce participation.

The need to promote flexible modern work practices and the efficient and productive performance of work (s 134(a)(d))

83. The Pastoral and Horticulture Awards have developed over time to accommodate for circumstances in particular industries. The nature of employment in the pastoral industry is different to the nature of employment in the horticulture industry. The crops that are grown on broadacre farming enterprises are either grown alongside a livestock operation, or without a livestock operation. The fact of having livestock does not alter the way in which those crops are grown so as to require a change in the rights and obligations of an employee and employer. They are the same crops grown in either circumstance and on larger livestock/crop farms an employee's duties may be restricted to either the cropping or livestock operation while on a smaller farm they may do both.
84. For this reason, a disruption to award coverage that pushes longstanding pastoral operations under the Horticulture Award will have an adverse impact on flexible modern work practices and the efficient and productive performance of work.

The need to provide additional remuneration (s 134(1)(da))

85. This consideration is neutral except in relation to casual employees who become covered under the Horticulture Award instead of the Pastoral Award as a result of the change proposed by Ai Group. Such employees may no longer have an entitlement to

overtime penalties, as these are not payable to casual employees under the Horticulture Award.

The principle of equal remuneration for work of equal or comparable value (s 134(1)(e))

86. The Pastoral Award has particular conditions of employment and remuneration that accommodate for the circumstances in that industry. If some traditional pastoral farms are pushed under the Horticulture Award, this will change the terms of remuneration. Work that is of equal or comparable value will not be remunerated equally as broadacre crops could be grown under both awards.

The likely impact on business including productivity, employment costs and the regulatory burden (s 134(1)(f))

87. Employment costs will be affected by the change proposed by Ai Group as employees traditionally remunerated under the Pastoral Award would now be remunerated under the Horticulture Award.

The need to ensure a simple, easy to understand, stable and sustainable modern award system that avoids unnecessary overlap of modern awards (s 134(1)(g))

88. The variation proposed by Ai Group will not improve clarity in the modern award system. The NFF is not aware of any issue that has arisen since 2010 where there has been uncertainty as to whether a cropping enterprise is covered by the Pastoral or Horticultural Awards. The recent variation to the definition of “broadacre field crop” in the Pastoral Award accommodates for innovation in the pastoral industry and does not create any additional confusion in the delineation of award coverage. While there has always been some overlap between the two awards, in a practical sense the issue has rarely arisen.

89. The variation proposed by Ai Group will instead increase uncertainty for those broadacre farmers who are growing crops only, such as those outlined in the witness statements attached to this submission.

The likely impact on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (Section 134(1)(h))

90. As has been outlined above, the change may have a negative impact on employment growth and competitiveness of the national economy as it will create an inflexible award system that does not accommodate the particular needs of industry and the flexibility required to adapt and innovate.

Conclusion

91. Prior to award modernisation, the types of crops that were broadacre field crops was not defined in the pre-award modernisation Pastoral Industry Award.

92. Horticultural crops were originally restricted to fruits and vegetables.
93. During award modernisation, there was much discussion around how to delineate between the two kinds of crops. This led to a definition of crops being inserted into the modern award for each industry. The term “broadacre mixed farming enterprise” was introduced to ensure that a pastoral enterprise growing vegetables in rotation with other broadacre field crops or livestock continued to be covered by the Pastoral Award. There was never an intention to limit the pastoral industry to a mixed farming enterprise that is defined only as being engaged in cropping and livestock production simultaneously.
94. The term “broadacre mixed farming enterprise” cannot be narrowly defined in the manner proposed by Ai Group as this would have the effect of pushing traditional pastoral farms out of the pastoral industry and into the horticulture industry.
95. Such a result is counter to the modern awards objective to create a fair and relevant minimum safety net of terms and conditions.
96. The current delineation of award coverage should not be disrupted as it works in practice and is well understood by the two industries. With the exception of the *Seery* case, the NFF did not identify any cases in which this issue has arisen.
97. If the Commission is of a mind to make changes to the delineation between the two awards, this would require an extensive evidentiary process involving all parties with an interest in either award. The complication of this issue does not lend itself to a simple and straightforward “fix”. The NFF reserves the right to make further submissions on any alternative variations.

Tony Mahar
Chief Executive

21 April 2017

Attachment A

History of Federal Award Coverage

Comparison of coverage terms – Horticulture industry – pre-2010

Award	Coverage Clause
Horticulture Industry (AWU) Award 2000 (Federal)	<p>6. COVERAGE OF AWARD</p> <p>6.1 Schedule A respondents</p> <p>Clause 1 to 13, 16 to 23 and 26 to 34 of this award apply to the respondents listed in Schedule A in respect of persons employed by them in the States of Victoria, South Australia, and New South Wales in, or in connection with:</p> <p>6.1.1(a) the dehydration of fresh fruits and/or partly dried fruits; 6.1.1(b) the packing of fresh pears and all classes of citrus fruits; 6.1.1(c) the processing of fruit juices; or 6.1.1(d) the cultivating, picking, packing and forwarding of fresh and/or dried fruits and canning fruits.</p> <p>6.2 Schedule B and C respondents</p> <p>Clauses 1 to 11, 16, 17 and 24 to 34 of this award apply to the respondents listed in Schedules B and C, and the members of the respondents listed in Schedule C, in respect of all persons employed by them in Australia in the fruit and vegetable growing industry, including persons engaged in, or in connection with:</p> <p>6.2.1(a) the cultivation, picking, dehydration, crystallisation, washing, juicing, canning, or any other processing, of fruits or vegetables; 6.2.1(b) the storing, packing, or forwarding of fruits or vegetables; or 6.2.1(c) the preparation of vineyard products.</p> <p>6.3 Where an employer bound to this award is also bound by the Pastoral Industry Award 1998, agreement will be reached with employees as to whether this award is to apply.</p>

<p>Horticultural Industry (State) Award (NSW)</p>	<p>33. AREA, INCIDENCE AND DURATION</p> <p>Industries and Callings</p> <p>It shall apply to all employees who are employed in classifications in this award:</p> <p>(a) upon farms, orchards, agricultural holdings, flower or vegetable market gardens in connection with the sowing, raising, harvesting or treating of horticultural products and crops, without limiting the generality of the foregoing including fruit, vegetables, and potatoes; or</p> <p>(b) at clearing, fencing, trenching, draining or otherwise preparing land for any of the abovementioned purposes; within the State, excepting persons performing work within the jurisdiction of the:</p> <p>Wine Industry Consolidated (State) Award</p> <p>Nurseries Employees (State) Award</p> <p>Fruit Packing Houses Employees (State) Award</p> <p>Mushroom Industry (State) Award</p> <p>Pastoral Industry (State) Award</p> <p>Cotton Ginning Employees (State) Award</p> <p>Cotton Growing Employees (State) Award</p> <p>Oyster Farms Employees (State) Award</p>
<p>Mushroom Industry Employees (State) Award (NSW)</p>	<p>26. AREA, INCIDENCE AND DURATION</p> <p>This award shall rescind and replace the Mushroom Industry Employees (State) Award published 9 March 2001 (322 I.G. 1147), and all variations thereof.</p> <p>It shall apply to employees who are employed by commercial mushroom growers on mushroom farms or in sheds or other like places where mushrooms are grown or cultivated, or in a clearing, fencing, trenching, draining, or otherwise preparing land in connection herewith.</p> <p>This award shall take effect from the first full pay period to commence on or after 14 August 2003 and shall continue in force for a period of 12 months.</p>

IN THE FAIR WORK COMMISSION

<p>Fruit and Vegetable Growing Industry Award – State 2002 (QLD)</p>	<p>1.4 COVERAGE</p> <p>Subject to the exemptions in clause 1.7, this Award applies to all employers and their employees engaged in the fruit and vegetable growing industry, including the preparation of land, cultivation, planting, care, picking, handling, treating, packing and despatching of all fresh fruits (including tomatoes) and vegetables, on or from fruit and vegetable farms, vineyards, orchards and plantations, throughout the State of Queensland.</p>
<p>The Dried Vine Fruits Industry Award 1951 (WA)</p>	<p>3. - SCOPE</p> <p>This Award shall apply to all workers employed by the employers in the Dried Vine Fruits Industry.</p>
<p>The Fruit Growing and Fruit Packing Industry Award (WA)</p>	<p>3. - SCOPE</p> <p>This award shall apply to all workers employed by the Respondents in the Classifications contained in clause 24. - Wages engaged in the Fruit Growing and Fruit Packing Industry, including the preparation of land, cultivation, planting, care, picking, handling, treating, packing and dispatching of all fresh fruits including tomatoes on or from gardens, farms, orchards and in packing sheds.</p>

IN THE FAIR WORK COMMISSION

<p>Farming and Fruit Growing Award (TAS)</p>	<p>2. SCOPE</p> <p>This award is established in respect of the industry of farming and/or fruit growing and without limiting the generality of the foregoing, shall include:</p> <p>(a) the preparation, sowing, raising, harvesting, preparation for packing, and packing of crops including grains, vegetables, peat moss, fungi, hops, nuts, or other specialised crops grown for the production of essential oils or pharmaceuticals;</p> <p>(b) livestock farming including the management, breeding, rearing and/or grazing of horses, cattle, sheep, pigs, goats, poultry, deer and/or other livestock and dairy farming;</p> <p>(c) fruit growing including the management, cultivation, picking, grading, processing for packing, packing and/or forwarding of fresh fruits including grapes;</p> <p>(d) seed farming and/or silviculture where such work is performed in conjunction with the activities specified in subclauses (a), (b) and (c) of this clause;</p> <p>(e) apiarist;</p> <p>(f) floriculturist (as defined);</p> <p>(g) viticulture.</p>
--	---

Comparison of coverage terms – Pastoral industry – pre-2010

Award	Clause
<p>Pastoral Award (AWU) 1998</p>	<p>5.4.1 This award shall apply to all employees, other than those specified in subclause 5.4.2 hereof, employed by respondent employers in connection with the management, rearing or grazing of sheep, cattle, horses or other livestock, the sowing, raising or harvesting of crops, the preparation and treatment of land for any of these purposes, and the shearing or crutching of sheep.</p> <p>This award bind all employers as defined and the union.</p> <p>5.4.2 This award shall not apply to:</p> <ul style="list-style-type: none"> • members of the employer’s family;

	<ul style="list-style-type: none"> • managers, overseers, woolclassers, shearing machine experts, bookkeepers, jackaroos, domestic cooks (as defined) or domestic servants (as defined). • bona fide students of a recognised university, college or high school who work as station hands during the course of their studies or during recognised work experience programs to gain experience in the industry. <p>Provided that this award shall apply to students engaged as shed hands or generally useful hands for shearing or crutching operations.</p>
<p>Pastoral Employees (State) Award NSW</p>	<p>76. AREA, INCIDENCE AND DURATION</p> <p>This award is made following a review under section 19 of the <i>Industrial Relations Act</i> 1996 and replaces the Pastoral Employees (State) Award published on 3 July 1998 (305 I.G. 757) and all variations thereof.</p> <p>The award published 3 July 1998 took effect on and from the first full pay period commencing on or after 3 June 1997.</p> <p>The award shall apply to all employees classified herein within the jurisdiction of the Pastoral Employees (State) Industrial Committee except:</p> <ul style="list-style-type: none"> (i) employees of the Crown; (ii) jackeroos; (iii) managers, overseers, engine drivers at shearing sheds, hutkeepers, bookkeepers, domestic cooks (as defined); (iv) bona fide students of a recognised university or college who work as station hands during the course of their studies to gain experience in the industry. <p>Provided that this award shall apply to students engaged as shed hands or generally useful hands for shearing or crutching operations.</p>

	<p>This award shall not apply to shearing demonstrations or shearing schools, provided that such demonstrations or schools are conducted on a non-profit making basis.</p> <p>This award shall also apply to employees classified herein within the jurisdiction of the Strappers, Grooms and Stablehands (State) Conciliation Committee.</p> <p>The changes made to the award pursuant to the Award Review under section 19(6) of the <i>Industrial Relations Act</i> 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of the New South Wales on 28 April 1999 (310 I.G. 359) take effect on 22 October 2004.</p> <p>This award remains in force until varied or rescinded, the period for which it was made already having expired.</p> <p>Pastoral Employees (State) Industrial Committee</p> <p>Industries and Callings</p> <p>All employees who are employed in rural industries within the meaning of section 131 of the <i>Industrial Arbitration Act</i> 1940:</p> <p>(1) upon pastoral holdings</p> <p>(a) in connection with</p> <p>(i) the management, rearing or grazing of horses, cattle, sheep or other livestock;</p> <p>(ii) the sowing, raising or harvesting of fodder; or</p> <p>(b) at other farm or station work; or</p> <p>(2) upon farms, orchards, or agricultural or pastoral holdings in connection with -</p>
--	---

IN THE FAIR WORK COMMISSION

	<p>(i) the shearing or crutching of sheep;</p> <p>(ii) the scouring, sorting, or pressing of wool; or</p> <p>(3) at clearing, fencing, trenching, draining, or otherwise preparing land for any of the abovementioned purposes;</p> <p>within the State;</p> <p>except sheep shearing machinery experts and wool classers.</p>
<p>Pastoral Industry (South Australia) Award</p>	<p>4.1 Except as provided in clauses 4.2, 4.3 and 4.4, this Award shall be binding on all persons engaged in connection with the management, rearing or grazing of sheep, cattle, horses or other livestock, the sowing, raising or harvesting of crops, the preparation and treatment of land for any of these purposes, and the shearing or crutching of sheep, whether as employers or employees or whether members of an association or not.</p> <p>4.2 The terms of this Award shall not be binding upon persons who are subject to an Enterprise Agreement within the meaning of the Act, but only to the extent of any inconsistency.</p> <p>4.3 This Award shall not apply to:</p> <p>(a) members of the employer's family;</p> <p>(b) managers, overseers, wool classers, shearing machine experts, engine drivers at shearing sheds, hutkeepers, book-keepers, jackeroos, jillaroos, domestic cooks (as defined) or domestic servants (as defined);</p> <p>(c) bona fide students of a recognised university or college who work as station hands during the course of their studies to gain experience in the industry.</p>

	<p>Provided that this Award shall apply to students engaged as shed hands or generally useful hands for shearing or crutching operations.</p> <p>4.4 This Award shall not apply to shearing demonstrations or schools, provided that such demonstrations or schools are conducted on a non-profit making basis.</p>
<p>Station Hands' Award – State 2003</p>	<p>1.4.1 This Award, except where otherwise stated herein, shall apply to all employees employed by any person, firm, or company owning or having control of Station property (either real or personal), whether as absolute Owner, mortgagee in possession, agent, lessee, or bailee, or in any manner howsoever, or employed by any person, firm, or company under contract to undertake or perform any work upon or in connection with Station property.</p>
<p>Farm Employees' Award, 1985 (WA)</p>	<p>3. - AREA AND SCOPE</p> <p>(a) On farms in connection with the sowing, raising, harvesting and/or treatment of grain, fodder or other farm produce.</p> <p>This award shall apply throughout the State of Western Australia to employees employed:-</p> <p>(b) On farms or properties in connection with the breeding, rearing or grazing of horses, cattle, sheep, pigs or deer; or</p> <p>(c) In clearing, fencing, well sinking, dam sinking or trenching on such farms or properties except employees who are bound by the award of the Australian Conciliation and Arbitration Commission and known as the "Pastoral Industry Award, 1965" as varied or replaced from time to time and the award of the Western Australian Industrial Commission, known as the "State Research Stations, Agricultural Schools and College Workers" Award No 23 of 1971 as varied, and as varied or replaced from time to time. Provided that this award shall not apply to the land and premises occupied by:-</p> <p>(1) Any institutions declared by proclamation under the "Aboriginal Affairs Planning Authority, Act, 1972"</p> <p>Or</p> <p>(2) Any of the following institutions:-</p> <p>Parkerville Children's Home Incorporated;</p> <p>Tom Allan Memorial Home for Boys, Weeribee;</p> <p>St Joseph's Farm and Trades School, Bindoon;</p>

IN THE FAIR WORK COMMISSION

	Christian Brothers' Agricultural School, Tardun.
--	--

Attachment B

Pastoral Award 2010 NFF Fact Sheet

Pastoral Award 2010 Fact Sheet



In early 2011, the Fair Work Ombudsman (FWO) in conjunction with the National Farmers Federation (NFF) commenced a national education campaign on changes to the Pastoral Award 2010.

The campaign has been funded by the Australian Government through the Fair Work Ombudsman's Shared Industry Assistance Projects (SIAP) Grant Program, which aims to better inform employers (particularly small to medium businesses) about changes to modern awards applicable to their industry sector. Following a competitive selection process, NFF was one of 15 successful organisations selected to deliver the education campaign in conjunction with the FWO.

What type of work does the Pastoral Award 2010 Cover?

This fact sheet has been developed to assist employers to implement the Pastoral Award 2010 at their workplace. It should not be seen as a replacement to the Award but rather guidance material to understand the Award.

The Pastoral Award 2010 (the Award) covers all employers and employees working in:

- The management, breeding, rearing or grazing of livestock or poultry;
- The shearing and crutching of sheep and the classing and pressing of wool on farms;
- Dairying;
- Hatchery work;
- Sowing, raising or harvesting of broadacre field crops and other crops grown as part of a broadacre mixed farming enterprise;
- Treatment of land for any other purposes; or
- Clearing, fencing, well sinking, dam sinking or trenching on such farms or properties.

The award specifically excludes work in the following circumstances:

- Wine industry (as defined in the Award)
- Silviculture and afforestation (as defined in the Award) except where carried on as part of a broadacre mixed farming enterprise.
- Sugar industry
- Horticulture industry (as defined in the Horticulture Award 2010)
- Aquaculture and fishing industry except where the production of freshwater species is incidental to a broadacre mixed farming enterprise.

Key questions that arise from the coverage clause (clause 4)

What is meant by the term "livestock"?

Livestock is defined as all animals used in primary production including insects. The term is therefore very broad. Interpretations previously determined have included bee-keeping, deer, goats, emus and ostrich.

What is meant by the term "broadacre field crop"?

This is a new term that has not been previously used in industrial awards. The award defines it as:

"Canola, wheat, hay, barley, oats, rice, triticale, maize, millet, chickpeas, cotton, faba beans, lucerne, lupins, pigeon peas, sorghum, soybean, sunflower, and other crops grown as a part of a broadacre mixed farm"

It is acknowledged that this is not a comprehensive list of crops which may be grown but provided the crop is being grown as part of a broadacre mixed farm the Award will apply. However, if a farmer produces one or more crops which are not listed and the farm does not meet the definition of "broadacre mixed farm" then there will not be any coverage under the Pastoral Award 2010.

What is meant by the term "broadacre mixed farming enterprise"?

A broadacre mixed farming enterprise is one which grows broadacre field crops or rears and manages livestock, or both. There is one specific component of the definition that requires clarification. The term includes a reference to a farming enterprise which grows crops, other than broadacre field crops, for the purposes of crop rotation or the rearing, management, and grazing of livestock as part of a mixed farming enterprise.

Pastoral Award 2010 Fact Sheet

Example: What does this mean in practice?

A farm produces a range of crops that include lucerne and hay and also watermelons through crop rotation. While watermelons are deemed a fruit under the Horticulture Award they are also a type of crop and as such so long as there is a combination of lucerne, hay and watermelons, the farmer will be covered by the Pastoral Award 2010.

As the term **"broadacre mixed farm enterprise"** is new and has not been tested in the courts it is strongly recommended that if a farmer is unsure as to whether the Pastoral Award 2010 applies or not, they seek advice from their industrial association, legal advisor or Fair Work Infoline on 13 13 94.

There are different sections of the Award, how do I work out which applies?

The Pastoral Award 2010 is separated into four parts: broadacre farming and livestock operations, pig breeding and raising, poultry farming and shearing operations.

The broadacre farming and livestock operations section is the "catch-all" section to cover all aspects of work that do not otherwise apply in the three specific sections.

There are specific definitions that determine whether or not a farm that includes pig breeding and raising or poultry farming will fall into the broadacre farming and livestock operations section. Please refer to the relevant fact sheet on those sections of the Award to determine which section applies.

Transitional Coverage Issues

A range of industrial awards that applied in the industry prior to 1 January 2010 were considered when the Pastoral Award 2010 was developed but it cannot be assumed, for example, that just because a farm was operating under the Pastoral Industry Award 1998 it will now automatically be covered under the Pastoral Award 2010.

It is, therefore, strongly recommended that employers check the coverage clause (clause 4) to ensure that the correct award is being used in their business.

Example:

Respondents to the Pastoral Industry Award 1998 included vegetable growers. Vegetable growing in most instances is now covered under the Horticulture Award 2010. However, vegetable growing can in limited circumstances be covered by the Pastoral Award 2010 if undertaken as a part of a mixed broadacre farming enterprise.

If you would like further information regarding this fact sheet or the *Pastoral Award 2010*, please contact NFF's Fair Work Liaison Officer, Denita Wawn on 02 6273 3855.

Legal Disclaimer

The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws.

The information contained in this publication is:

- general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and
- not legal advice.

Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. This information was published on Wednesday 16 March 2011. The FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information.

IN THE FAIR WORK COMMISSION

Matter No: AM 2016/25 Horticulture Award 2010

Re: Application by National Farmers Federation

STATEMENT OF BARBARA GREY

On the 19 April 2017, I, Barbara Grey of [REDACTED], in the State of Queensland, state as follows:

1. I am a farmer as well as a Board Member of Cotton Australia.
2. My husband [REDACTED] and I have been farming in [REDACTED] since 1980. Since 2012, we have also farmed at [REDACTED].
3. In [REDACTED], we farm 1400 hectares and in [REDACTED] we farm 450 dryland hectares. Primarily we grow cotton, wheat and continue to farm a range of agricultural commodities – chickpeas, mung beans, sorghum, sunflowers etc – depending on economic weather conditions season to season.
4. In our experience, the general understanding within industry is that the *Pastoral Award 2010* applies to such enterprises.
5. Exactly what a property owner or manager decides to grow on their property will depend on a range of factors and will often vary greatly depending on industry and seasonal variables. Combined stock and cropping enterprises are relatively common; however this will depend on commodity and livestock values, what is best suited to the agricultural enterprise and the season.
6. It is unreasonable to expect that a property that carries livestock some of the time will do so all of the time.
7. While properties with a breeding focus may have livestock on farm for long periods of time, other types of livestock enterprises, such as those with a focus on ‘finishing’ may only bring cattle on for months at a time, before completely destocking and focussing on cropping.
8. Our properties are solely focussed on crop production and we do not run livestock. It is not uncommon for large cropping properties to lack the necessary infrastructure required to run livestock including fencing and handling facilities. Nonetheless, we still consider our farms to be mixed farming enterprises, with a range of crops grown on our properties which require crop-specific management and expertise.
9. Decisions surrounding what crops are grown on our property are based on obtaining the best return possible for the season. Commodity values, input costs, seasonal conditions and water availability are key considerations when making decisions.
10. Cotton is specifically excluded from the Horticultural Award under 4.3(d), but the changes proposed by Australian Industry Group may still affect members of the cotton industry who may not grow cotton in some years due to water availability or other pressures.

11. The Modern Awards are lengthy and sometimes confusing documents for growers to navigate. It should be of high importance that they remain as simple and easy to understand as possible. It is my understanding that requiring livestock for a property to be classified as mixed farming, (and therefore be covered by the Pastoral Award) would create confusion and uncertainty, particularly for broadacre growers such as myself that operate cropping-only enterprises or those that do not run livestock on a permanent basis.



Signature
Barbara Grey

Date: 20-4-2017

IN THE FAIR WORK COMMISSION

Matter No.: AM2016/25

Re Application by: National Farmers' Federation

Statement of David McKeon

1. I am General Manager, Policy and Innovation of Grain Growers Limited, an independent and technically resourced, grain farmer representative organisation with 17,500 members across Australia.
2. Our members include broadacre grain growers across Australia. They grow crops such as, but not limited to, wheat, barley, canola, pulses, sorghum and oats.
3. Broadacre crops are commonly grown in rotation; the rotation mix may include several grain and/or non-grain varieties depending on prevailing market prices, agronomic factors and seasonal conditions. The rotation mix is likely to be different each year in terms of crop types used and the amount of an individual crop planted.
 - a. For example, a farmer may increase the amount of canola planted and decrease wheat plantings if prevailing wheat prices are comparatively low or to allow for better management of weeds (as a broadleaf crop, there are different herbicide tolerant varieties of canola which give more options for weed control than in cereals such as wheat and barley).
 - b. For example, a farmer may increase canola planting and decrease lupin planting over time in response to prevailing agronomic challenges. However as legume varieties improve, they may increase planting again to get the benefit of legumes nitrogen fixing capabilities as part of the crop rotation.
4. Many of our members run livestock as well as cropping, while others do not. There are various reasons for this which reflect soil and climatic conditions, economic conditions and market opportunities, new technology, farm management innovations, varietal improvements and personal preferences.
5. For example, in the wheat belt region of Western Australia there has been a significant increase in the number of previous wheat/sheep farms that are now 100% cropping and do not graze livestock. An example of a reason for this being that producers have found with hot summers, carrying livestock through this period had a major impact on fragile soils, which in turn affected cropping performance. As a result, many have decided to transition to all cropping and consequently reconfigured the farm to have larger paddock sizes which is better for cropping. Often, the farm will retain the basic infrastructure for livestock. This provides flexibility to revert their production back to a mixed livestock/cropping operation if desired due to changes in input costs and market prices for crops and livestock among other factors.

Page 1 of 2

Lodged by National Farmers' Federation

Telephone: 02 6269 5666

Address for service:

Fax: 02 6273 2331

Locked Bag 9, Kingston ACT 2604

Email: kpearsall@nff.org.au

6. Of course, there are many mixed livestock/cropping farms in operation as well. This reflects the type of country being farmed, and underpins both the short and long term economic viability of a farm, spreading income, production and marketing risks associated with different types of agricultural production.
7. Historically, our members have applied the *Pastoral Award 2010* and its predecessor to their operations. The common crops that our members grow as part of their cropping operations have been listed in the Award and it also covers them if they operate as a mixed livestock/cropping farm.
8. We are concerned about the proposed changes to the definitions in the Horticulture Award as it could suggest a 100% cropping broadacre farm is part of the horticulture industry when this is clearly not the case. The impact of these changes could be to alter the coverage of the Pastoral Award by restricting it to circumstances where a farm is growing crops and livestock simultaneously (or livestock only).
9. It is important for broadacre cropping business that, regardless of whether our members are 100% cropping or have a mixed livestock/cropping farming operation, the Pastoral Award continues to apply.



David McKeon

21/04/2017

Date

IN THE FAIR WORK COMMISSION

Matter No: AM 2016/25 Horticulture Award 2010

Re: Application by National Farmers Federation

STATEMENT OF JEREMY MORTON

On the 19th of April 2017, I, Jeremy Morton of 37 Yanco Avenue, Leeton in the State of New South Wales, state as follows:

1. I am President of the Ricegrowers' Association of Australia (RGA).
2. RGA is the collective voice of rice growers in Australia. The RGA represents the interests of around 1200 voluntary rice grower and industry supporter members, predominantly based in the irrigation areas of the Murray and Murrumbidgee valleys. RGA is a member of the National Farmers' Federation.
3. RGA supports the position of the National Farmers' Federation in these proceedings.
4. It is our view that the application of the *Horticulture Award 2010* to enterprises that grow broadacre crops, with the exclusion of enterprises that grow broadacre crops AND manage, breed, rear or graze livestock, is both impractical and unrealistic for rice growers.
5. Historically, rice growers have applied the *Pastoral Award 2010* to their farming operations.
6. Ricegrowers often grow rice alongside, or in rotation with, other grains and crops such as canola, corn, soya beans, pastures for hay, legumes, cotton etc.
7. Rice growers generally operate a mixed livestock/cropping farming enterprise, and livestock are in many instances an important part of the enterprise. The RGA estimates that around 60 per cent of rice growers incorporate livestock into their farming enterprise while the other 40 per cent are cropping only enterprises.
8. Many growers choose to manage, breed, rear or graze livestock on an opportunistic basis, meaning the enterprise is constantly shifting from one that is purely a cropping business to one that includes crops and livestock. This flexibility is extremely important to rice growers, who often take advantage of this flexibility to manage risk associated with climate and markets.
9. For example, when conditions are dry and little irrigation water is available to produce a rice crop, a rice farmer may irrigate their crops, and take advantage of the residual moisture in the soil to grow feed for stock. On this basis, they may then bring stock into their enterprise through an agistment arrangement, or otherwise by purchasing stock with the intention of improving and re-selling.

Lodged by National Farmers' Federation

Telephone: 02 6269 5666

Address for service:

Fax: 02 6273 2331

Brisbane Avenue, Barton ACT 2604

Email: kpearsall@nff.org.au

10. Similarly, a farm may choose not to have livestock due to the size and suitability of landholdings, and the availability of labour and/or skills to assist with stock management.
11. Any proposed changes to the Horticulture Award that would result in a rice growing business constantly shifting from being covered by the *Horticulture Award 2010* to being covered by the *Pastoral Award 2010* (and vice versa) would likely result in much confusion for rice growers and consequently reduced compliance across the industry.

.....

Signature
Jeremy Morton

Date:

IN THE FAIR WORK COMMISSION

Matter No: AM 2016/25 Horticulture Award 2010

Re: Application by National Farmers Federation

SUPPLEMENTARY STATEMENT OF KEITH RICE

On the 21 April 2017, I, Keith James Rice of [REDACTED] in the State of Tasmania, state as follows:

1. Historically, award coverage of the pastoral industry was restricted to shearing operations but over time, this was broadened to encompass all activities undertaken on broadacre farming operations. This included livestock and crops.
2. Award coverage of the horticulture industry was originally intended to cover all fruit growing and small, intensive vegetable producers such as those close to the cities. Over time, this was broadened to include more extensive vegetable growers.
3. There has never been any intention to exclude broadacre farming operations from the Pastoral Industry Award where they are extensive croppers who do not produce livestock simultaneously.
4. The work involved in producing broadacre crops on a cropping only enterprise is the same as that involved in producing broadacre crops on a livestock/cropping enterprise. For this reason it has always been appropriate that coverage be consistent between the two.
5. Furthermore, farm businesses are adaptive and will change their operations in response to external influences such as markets and climate. This means a farming enterprise may change its enterprise focus over time to accommodate changing market conditions, environmental issues, and/or disease management. They may change their enterprise mix over time to one of cropping only, livestock only or a combination of both.
6. Under the current *Pastoral Award 2010*, the definition of “broadacre mixed farming enterprise” does not mean all of the described activities in the definition have to be undertaken on the enterprise to meet the definition. Each of those activities is mutually exclusive of the other.
7. An interpretation of “broadacre mixed farming enterprise” that includes farms that grow broadacre crops only, such as grain, would align with the historical interpretation of crops in the pastoral industry.

Lodged by National Farmers’ Federation

Telephone: 02 6269 5666

Address for service:

Fax: 02 6273 2331

Locked Bag 9, Kingston ACT 2604

Email: kpearsall@nff.org.au



.....
Signature
Keith James Rice

Date: 21st April 2017