



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)

AM2008/14

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AWARD MODERNISATION

MATTER NO. AM2008/14 – AGRICULTURE INDUSTRY

DRAFT EXPOSURE DOCUMENTS

HORTICULTURE AWARD 2010

1. AFEI has earlier provided submissions to the Commission concerning the Agriculture Industry and participated in the Commission's consultations.
2. There are several aspects of the Commission's exposure draft Horticulture Award 2010 which are a particular concern to AFEI, as indicated below.

Part Time Employees

3. Clause 10.3 (c) of the Exposure Draft provides that an employer must inform a part-time employee of their ordinary hours of work and starting and finishing times. This provision is considerably more restrictive than the provisions for part time employment under the Notional Agreement Preserving Horticultural Industry (NSW) State Award (Horticulture NAPSA) and the Notional Agreement Preserving Mushroom Industry Employees (NSW) State Award (Mushroom NAPSA).
4. Clause 10.3 (d) of the Exposure Draft provides that all part time hours in addition to mutually agreed hours are to be paid as overtime. This proposal would create an additional cost obligation on employers covered by Horticulture and Mushroom NAPSAs where more flexible arrangements currently apply.

5. It is proposed that the part time provisions in the modern award reflect the terms of the NSW Horticulture and Mushroom NAPSAs by deleting Clause 10.3 (c) and amending 10.3 (a) by the addition of the following:

“(iii) has reasonably predictable hours of work; and

(iv) by agreement may work up to an average of 38 hours per week without the payment of overtime.”

Casual Employees

6. Clause 10.4 (b) of the Exposure Draft provides a casual loading of 25%. The Exposure Draft, however, does not clarify the basis on which casual employees are paid overtime, or where applicable, penalty rates. For employers currently covered by the Horticulture and Mushroom NAPSAs, the 25% loading is a significant increase over the 15% loading (plus 1/12th on ordinary hours) especially in the calculation of overtime and penalties. It is proposed that the modern award specify that the casual loading is not payable in addition to overtime and penalties rates payable to casual employees.

Ordinary Hours

7. The exposure draft, at Clause 22.3, proposes a spread of ordinary hours from 5am and 7pm, which is significantly less flexible than currently applies to the majority of the Horticulture Industry, as evidenced through the submissions of the Horticulture Australia Council.
8. The working hours within the industry are based around the requirements of working with live fruit, and, such as at harvest time, determined by the maturity of the fruit and the demands of the marketplace. AFEI submits that it would be inappropriate for a modern award to restrict the spread of ordinary hours that

currently applies in the Horticulture NAPSA, ie 5am to 8pm Monday to Sunday.

Allowances

9. Clause 17.1 (b) proposes a wet work allowance at the rate of 10% of the standard per hour, that is, \$1.475 per hour or \$11.80 for eight hours. The proposed allowance would amount to a significant increase over the current Horticulture NAPSA allowance, that is, a daily payment of \$3.70 per day.
10. Clause 17.1 (d) appears to omit the words 'after arrival at the designated workplace' from after the words '...from one place to another,' as appears in the Commission's Exposure Draft Nurseries Award 2010 and request that the clause be amended accordingly.

Superannuation

11. Clause 21.5 of the Exposure Draft provides for the payment of superannuation contributions at any employee's normal rate while the employee is absent from work and receiving workers compensation. Unlike the Exposure Draft, however, the Horticulture and Mushroom NAPSAs do not contain this obligation, and, AFEI submits that it is not an industry standard.
12. AFEI submits that the introduction of the obligation proposed in 21.5 to employers who are not currently subject to this obligation, is not consistent with the Full Bench Decision of 19 December 2008 concerning the maintenance of a pre-existing safety net.

Annual Leave

13. Consistent with the Consolidated Ministerial Request, AFEI submits that the modern award provide for cashing out of annual leave, subject to the conditions outlined in the Request.
14. AFEI submits that the modern award should contain provision for employers to require employees to take annual leave as appears in the Exposure Draft Nursery Industry award 2010, as follows:

“Time of taking leave

- (i) Annual leave is to be taken within six months after the annual entitlement becomes due unless otherwise agreed, unless to do so would be unreasonable in the circumstances. The employer must give one month’s notice of any requirement for the employee to take accrued leave.
- (ii) The employer may require annual leave to be taken during periods of business close down or when the business cannot open due to restrictions on opening hours due to State or Federal legislation. The employer may also require leave to be taken at certain times of the year because of particular seasonal requirements.”

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Classification Level	Horticultural Industry AWU Award 2000 – Indicative Tasks	Horticultural Industry (NSW) State Award (NAPSA) – Indicative Tasks
<p>Horticultural Industry AWU Award 2000 – Level One Employee</p> <p>&</p> <p>Horticultural Industry (NSW) State Award (NAPSA) – Farm Employee Level One</p>	<p>Equivalent tasks:</p> <ul style="list-style-type: none"> • General labouring duties; • Fruit & vegetable picking, thinning or pruning; • Sorting, packing or grading of produce where this requires the exercise of only minimal judgement. <p>Other tasks:</p> <ul style="list-style-type: none"> • Operate small towing tractor engaged in transfer of produce bins and other containers during harvest; • Perform a range of housekeeping tasks in premises and grounds 	<p>Equivalent tasks:</p> <ul style="list-style-type: none"> • General labouring duties; • Picking of product; Pruning & care of trees & plants; • Basic sorting and grading of product; Incidental tasks involved in getting product to packing shed including packing and assisting in transport. <p>Other tasks:</p> <ul style="list-style-type: none"> • Cultivation of soil, trees and plants including with manually operated tools and equipment; • Repair and use of packaging equipment
<p>Horticultural Industry AWU Award 2000 – Level Two Employee</p> <p>&</p> <p>Horticultural Industry (NSW) State Award (NAPSA) – Farm Employee Level Two</p>	<p>Equivalent tasks:</p> <ul style="list-style-type: none"> • Perform a range of tasks involving the set up and operation of production and/or packaging or picking equipment, labelling and/or consumer picking equipment. Use hand trolleys, pallet trucks or other mechanical or power driven lifting or handling devices not requiring a licence; • Irrigation, spraying or pruning under general supervision; • Operate tractors with engine capacity of up to 70kw. <p>Other tasks:</p> <ul style="list-style-type: none"> • Repetition work on automatic, semi-automatic or single purpose machines or equipment; • Assemble/dismantle components using basic written, spoken and/or diagrammatic instructions in an assembly environment; • Sorting, packing and grading beyond the scope of level 1 duties; • Maintain simple records; • General and routine product testing; • Provide assistance to other employees; • Assist in on-the-job training in conjunction with supervisors, tradespersons or trainers. 	<p>Equivalent tasks:</p> <ul style="list-style-type: none"> • Operation of powered tools or implements including picking or harvesting equipment and fork lifts not requiring licence or ticket; • Operation of irrigation equipment and associated chemical equipment; • Operation of tractors drawing power-operated attachments/tillage implements with engine capacity of up to 70kw. <p>Other tasks:</p> <ul style="list-style-type: none"> • Farm employee level one with at least 12 months experience in the industry; • Farm employee level one responsible for supervising the work of others.

<p>Horticultural Industry AWU Award 2000 – Level Three Employee</p> <p>&</p> <p>Horticultural Industry (NSW) State Award (NAPSA) – Farm Employee Level Three</p>	<p>Equivalent tasks:</p> <ul style="list-style-type: none"> • Driving motor lorries or mechanical harvesters or forklifts; • Operate tractors with engine capacity of over 70kw; • Minor maintenance of plant. <p>Other tasks:</p> <ul style="list-style-type: none"> • Irrigation, spraying, pruning without supervision; • Records detailed information on production and quality indicators; • Assists in the training, instruction and coordination of employees. 	<p>Equivalent tasks:</p> <ul style="list-style-type: none"> • Licensed forklift operators; • Operate tractors above 70kw engine capacity including potato harvester; • Minor maintenance of plant and equipment. <p>Other tasks:</p> <ul style="list-style-type: none"> • Boiler and furnace operator; • Use of measuring instruments; • Loading & unloading of produce onto transport; • On farm manufacture of packaging equipment; • Classing & blending of product; • Prepares deep shafts (over 2.4m) and other structures required for production.
<p>Horticultural Industry AWU Award 2000 – Level Four Employee</p> <p>&</p> <p>Horticultural Industry (NSW) State Award (NAPSA) – Farm Employee Level Four</p>	<p>Indicative task:</p> <ul style="list-style-type: none"> • Performs quality checks on the work of others; • Quality assurance/control; • Inventory and store control; • Basic engineering and fault handling; • Assists in providing on-the-job training; • Monitors variables affecting production yields, detects errors, investigated causes and recommends collective/preventative action; • Licensed and certified to operate forklifts, engine driving and crane operation; • Licensed operation of all appropriate materials handling equipment; • Basic non-trades maintenance involving the use of tools and equipment; • Furnace/boiler operator; • Uses precise measuring instruments; • Machine setting, loading and operation. 	<p>Indicative tasks:</p> <ul style="list-style-type: none"> • Understanding of and ability to apply quality standards; • Ability to blend and class product within class or quality standards.

<p>Horticultural Industry AWU Award 2000 – Level Five</p> <p>&</p> <p>Horticultural Industry (NSW) State Award (NAPSA) – Farm Employee Level Five</p>	<p>Employees at this level are trade qualified.</p> <ul style="list-style-type: none"> • Operate, set up and adjust maintenance functions including: removing equipment fastenings, running adjustments to production equipment; operate all lifting equipment; • Basic production scheduling and materials handling; • Exercises high-level stores & inventory responsibilities; • Provides on-the-job training; • Provides assistance to other employees; • Inspects products/materials for conformity with established operational standards and approves/passes first off samples. 	<p>Rural Tradesperson</p> <p>No list of indicative duties</p>
<p>Horticultural Industry (NSW) State Award (NAPSA) – Farm Employee Level Six</p>	<p>No level 6 in this award.</p>	<p>Quality Inspector</p> <p>No list of indicative duties.</p>