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
DRAFT EXPOSURE DOCUMENT

NURSERY INDUSTRY AWARD 2010

Introduction

1. AFEI has provided submissions to the Commission's processes concerning the Agriculture Industry and participated in the Commission's consultations.

2. AFEI's consultations with Nursery members indicate that operating conditions in the industry have been extremely difficult over recent years due to widespread drought conditions and water usage restrictions. More recently operating conditions have become substantially more difficult due to the significant downturn in the Australian economy.

3. It is AFEI's primary position that a separate Nursery Industry Award is justified if such an award recognises the flexibility required for nursery operations, and should be no less favourable than regulation provided through current award coverage. The Commission's Exposure Draft Nursery Industry Award 2010, however, in our view, does not reflect these requirements and potentially will have a significant adverse cost impact on the Nursery industry, particularly in NSW and Victoria.

4. AFEI's membership interests are principally concerned with nursery operations in Victoria and NSW. As indicated in the submissions by the NGIA, nursery operations in Victoria are presently award free, while retail operations are covered by the Shop, Distributive Allied Employees Association – Victorian Shops Interim Award. Nursery operations in NSW are principally regulated by:

- The Notional Agreement Preserving the Nurseries Employees (NSW) State Award (the Nurseries NAPSA); and,
- For retail, the Notional Agreement Preserving the Shop Employees (NSW) State Award (the Retail NAPSA).

5. A number of the comments below are based on comparisons between the Commission's Exposure Draft and the abovementioned Award and NAPSA's.

Comments and Proposed Amendments

Clause 4 - Coverage

6. AFEI proposes that the definition of associated nursery products which appears in Clause 3.1 be amended to read as follows:

   "associated nursery products means all items required for the propagation, growing, maintenance and sales of plant material. This includes those products used in the garden environment including but not limited to soils, seed, fertilisers and bulk garden material".

7. Clause 4.2 (b) OF THE Exposure Draft appears to indicate that the proposed award is intended to apply to retail aspects of nurseries, apparently consistent with the Full Bench Decision of 19 December.

8. Further, we will exclude stand alone meat retailing and, at this stage, stand alone nurseries from the general retail award to enable those types of operations to be considered as part of the meat and agriculture industries respectively.

9. Further comments on the potential impact of 4.2(b) are provided later in this submission concerning Hours of Work.

10. It is proposed that Clause 4.2 (c) be amended to read:

"in the processing, grading, packing, displaying for sale or storing of plant material and associated products as part of a nursery"

11. It is proposed 4.2 (d) be amended as follows:

"in the dispatching, distribution and preparation for sale of plant material and associated products in connection with work under clause (XX)."

Part Time Employment

12. Clause 10.3 (g) of the Exposure Draft provides that all part time hours in addition to mutually agreed hours are to be paid as overtime. Currently both NSW NAPSAs provide that overtime is not payable for additional part time hours which do not exceed full time ordinary hours.

Casual Employment

13. Clause 10.4 (b) provides for a casual loading of 25%. While this loading is consistent with the Commission's approach to modern awards, the current loadings in both NAPSAs are 15% plus a further 1/12th loading for annual leave. While the difference in the all up quantum may appear to be small, the 1/12th loading is not included in calculations of Superannuation, or the payment of overtime or weekend penalties. The Retail NAPSA, moreover, provides a flat amount payment of $5.90 for work by casual employees on Saturdays in Special Shops. The potential cost impact of the Exposure Draft on casuals engaged on Saturdays is expected to be substantial.

14. Clause 10.4 (d) imposes a new obligation to provide payment for casuals at the end of each engagement, ie daily, unless agreed otherwise. It is proposed that payment should occur on an employer's regular payday, except where the periods of engagement of a casual employee end prior to the ordinary payday.

15. Clause 10.4 (f) provides for casual conversion after a period of 6 continuous months. This provision is not supported. Such an obligation does not currently apply to Nursery operations, at least in NSW and Victoria, and it is not an industry standard.

Classifications and Minimum Wages

16. AFEI has a number of concerns with the proposed Clause 14.2 Classifications and Gradings. The concerns include a significant proposed increase in the rate of pay for Senior Nursery Tradespersons compared with the Nurseries NAPSA and introduces a new Classification Grade 6, currently not applicable, covering Nursery Managers, along with a range of non managerial activities including 'despatch', and 'Senior Growers".

AFEI does not support the inclusion of Managers in the modern award and does not support the proposed Grade 6. It is proposed Grade 6 is deleted from 14.2 and Schedule A amended as shown in the attached amended Schedule A.

17. AFEI proposes the modern award include provision for Apprentices, consistent with the current provisions of the NSW Nurseries NAPSA. It is proposed the modern award include the following Clause:

"Apprentices

The minimum wages for indentured and trainee apprentices are the appropriate percentages of the Grade 4 rates contained in Clause 14.2, as follows:

Year	**Indentured Apprentice**	**Trainee Apprentice**
1st year	55%	58%
2nd year	65%	67%
3rd year	75%	76%
4th year	90%	91% "

Salary sacrifice

18. Consultation with AFEI members has indicated a strong desire for the modern award to provide arrangements for salary sacrifice for superannuation. It is proposed that such arrangements could be provided by way of the following Clause, as provided in the Black Coal Mining Industry Award 2010:

"Subject to all relevant laws, an employer and an individual employee may agree to a salary sacrifice arrangement. The obligations of the employer in respect of payment of remuneration will be satisfied by the employer complying with such an arrangement provided that the salary sacrificed amount and the residual wages combined are not less than the classification rate otherwise payable."

Allowances

19. Clause 18.1 of the Exposure Draft proposes a new arrangement whereby the employer reimburses an employee the cost of supplying tools. It would be more appropriate for the modern award to either provide an allowance payable where an employee is required to provide tools, or that where the employer meets the costs of the tools that such tools belong to the employer.

20. It is proposed that the modern award include provision for circumstances where an employee is required to use their own vehicle during working hours with payment of an allowance based on cents per kilometre travelled.

Ordinary Hours of Work and Rostering

21. As indicated earlier, retail operations of Nurseries in NSW are currently covered by the NSW Retail NAPSA and are categorised as Special Shops with additional flexibility in their operating hours. Most significantly the span of ordinary hours is 7am to 8.30pm Monday to Sunday, and with flexibility for employees to work up to six days in one week along with 4 days in the next. Retail operations in Victoria covered by the Shop, Distributive Allied Employees Association – Victorian Shops Interim Award are also provided with significant flexibility with the span of ordinary hours, ie Monday to Friday: 7am – 9pm, Saturday: 7am – 6pm and Sunday: 9am – 6pm.

22. Clause 21.2 of the Exposure Draft, however, provides for ordinary hours of work between 6am and 6pm Monday to Friday, with an extension of ordinary hours to 9pm on one day of the week only. The obvious impact on nurseries with extended trading hours would be the introduction of overtime for all hours worked after 6pm on six out of seven days in NSW and overtime on 4 days of the week in Victoria. The minimum requirements of the industry are a span of ordinary hours 6am to 9pm Monday to Friday, and 6am to 6pm on Saturday and Sunday.

23. Clause 21.2 of the Exposure Draft proposes penalty rates for work on Saturdays and Sundays. The proposed penalties are significantly higher than current arrangements in Victoria, and significantly higher than the current penalty (150%) which applies to both horticulture and retail aspects in NSW. The additional cost of Sunday trading in NSW, which we understand is the busiest retail day, will be a significant burden to the industry. One of AFEI's members advises that 44.8% of its weekly sales occur on Saturdays and Sundays. The introduction of a 200% penalty on Sundays has implications for reduced employment. AFEI proposes that the Sunday penalty rate should not exceed 150%.

Breaks

24. It is proposed Clause 22.3 be amended to read 'day' in place of 'morning'.

Schedule A—Classification Structure and Definitions

A.1 Grade 1

25. Employees in this grade perform and are accountable for nursery tasks as directed within the skill levels set out below. They work within established routines, methods and procedures. Supervision is direct.

26. Employees may be required to train other employees in the skills of their own grade by means of personal instruction and demonstration.

27. Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below.

- Assisting with potting machines, seeding machines, bagging machines, transplanting machines, grading machines, etc.
- Assisting with spray application
- Cleaning
- Collecting cuttage, budwood or scions
- Flower bunching
- General errands
- General/labouring duties
- Grafting and budding
- Irrigation
- Labelling, stacking and preparation of stock for sale

- Mixing soil, container filling, container assembly
- Moving plants
- Order selection and assembly
- Packing shelves for sale of plant materials and associated products
- Packing plants and seedlings
- Picking and grading
- Plant care and ground maintenance
- Potting
- Preparing and sticking cuttings
- Spacing and moving plants
- Transplanting
- Tubing
- Unloading/receiving materials
- Using towing and/or carry-all vehicles etc.
- Watering
- Weeding

A.2 Grade 2

28. Employees in this grade are capable of performing Grade 1 duties but in addition are required to perform nursery tasks using a more extensive range of skills and knowledge at a higher level than required in Grade 1. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.

Duties include -

- Answering phone
- Basic data entry
- Basic plant maintenance
- Control and maintenance of nursery equipment, general amenities, structures, and irrigation equipment
- Direct Enquiries and customer assistance
- Disease and pest control
- Driving tractors with implements
- Fertigation
- Filing
- Merchandising
- May be in charge of one assistant of a lower grade

29. Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

30. Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out above.

A.3 Grade 3

31. Employees in this grade are capable of performing Grade 1 and 2 duties but in addition are required to perform nursery tasks using a more extensive range of skills and knowledge at a higher level than required in Grade 2. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.

Duties include:

- Correspondence (handling)
- Customer service and sales
- Forklift operator
- Front end loader operator
- Invoicing customers for the sale of plant material and associated products
- Order acceptance
- Processing income
- Receiving money and operation of cash registers
- Regular delivery driver of nursery and associated products
- Ticketing, bar-coding and pricing for sale of nursery and associated products

32. Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

33. Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out above.

A.4 Grade 4—Certificated Tradesperson

34. Employees in this classification perform nursery duties using a more extensive range of skills and knowledge at a higher level than required of a Grade 3, having obtained and required to utilise the appropriate Accredited Trade Certificate or equivalent. They are responsible and accountable for their own work and may have responsibility for the work of up to three additional employees. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is minimal.

Additional duties may include:

- Independent cultural decisions relevant to previous gradings (e.g. plant nutrition, visual merchandising, menus)
- Payroll and general accounting duties
- Processing of income and outgoing invoices

35. Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

A.5 Grade 5

36. Employees in this classification have obtained the Accredited Trade Certificate or equivalent and perform nursery duties using a more extensive range of skills and knowledge at a level higher than that required of a Grade 4. They are responsible and accountable for their own work and may have responsibility for the work of a section or unit. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is by means of reporting to senior management or proprietor.

Duties include:

- Ability to use a variety of computer packages (this may include, but not limited to, desktop publishing, spreadsheets, word processing, databases, etc.)
- Allocation of accounts
- Co-ordination of production programs
- Creditor/debtor reconciliation
- Data reconciliation
- Design & implement fertiliser programs and pest control programs
- Design, install and use irrigation systems
- Landscape consultation and/or design
- Ordering stock
- Planning, co-ordination and implementation of nursery maintenance programs
- Preparation of daily reports
- Set production and sales targets
- Set shift rosters

37. Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

38. Employees will be classified at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out above.