



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

AM2008/73

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
AWARD MODERNISATION
AM 2008/73 – GARDENING SERVICES INDUSTRY

1. The Australian Federation of Employers and Industries (AFEI) make the following submissions concerning the Gardening Services Industry, which is included in Stage 4 of Award Modernisation.
2. AFEI submit that the Gardening Services Industry is comprised of those engaged in the provision of gardening services, incorporating both the establishment and maintenance of gardens/plants, arborists, tree loping and green keeping in or in connection with residential homes and commercial / industrial premises.
3. AFEI supports the creation of a stand alone Modern Award for the Gardening Services Industry to cover employers engaged in the provision of services listed above.

Scope of a Modern Award

4. AFEI note that there is significant support from within the Landscape Gardening Industry for the establishment of such a Modern Award, however we wish to highlight a concern of the industry regarding the coverage of any Modern Awards.
5. Presently in NSW the Gardening Services Industry is regulated by the following NAPSAs, the;
 - Notional Agreement Preserving the Landscape Gardeners & c., (State) Award;

- Notional Agreement Preserving the Landscape Gardeners & c., on Building and Construction and Maintenance, Civil and Mechanical Engineering (State) Award;
 - Notional Agreement Preserving the Miscellaneous Gardeners & c., (State) Award;
6. Currently there are high levels of confusion in NSW as to what type of work constitutes 'construction' for the purposes of ensuring the correct application of the Landscape Gardeners on Construction NAPSA.
 7. AFEI submits that within the Gardening Services Industry it is not uncommon for an employer to be engaged at multiple sites on any day, and nor is it uncommon for these sites to be a mixture of construction and non-construction work. As such within a particular day the award coverage of an employee may vary depending on the site and nature of the work they are undertaking.
 8. Thus, AFEI submits that the coverage and application provisions of a stand alone Modern Award for the Gardening Services Industry must be flexible and cohesive enough to accommodate the nature of landscape gardening within a single industrial instrument. With New South Wales and the Northern Territory being the only jurisdictions to apply a different industrial instrument depending on the location of the landscape gardening, such a distinction is not an industry standard and should not be adopted in a national instrument.

Hours of Work

9. AFEI submits that when considering the ordinary hours to apply to a Modern Award in this Industry, the Commission must have regard to the nature of the work and client requirements. Employers within the Gardening Services Industry are restricted in provision of their services by the demands of clients, and often are unable to influence the dates and times when work is to be performed.
10. AFEI submits the Commission should adopt the ordinary hours of the NSW Landscape Gardeners & c., NAPSA with a span of ordinary hours from 5am to 6pm Monday to Friday and 5am to 12 noon Saturday.

Casual Loading

11. AFEI submits that currently casual loadings within the industry range from 15% to 20% and should a casual loading of 25% be set the potential cost increases for employers should be taken into account by the Commission when establishing other appropriate loadings such as penalty rates for weekend or overtime work.

Apprentices and Trainees

12. AFEI also submits that a modern award should include apprentice and trainee provisions. Under the current NSW NAPSA, apprentices are only expressly considered under the Landscape Gardeners & c., NAPSA leaving employers falling within the scope of the remaining NAPSA's facing difficulties in establishing the appropriate terms and conditions of employment should the wish to engage apprentices.

13. AFEI submits that a stand alone Modern Award should be created for the Gardening Services Industry and that the coverage of the award should include the construction and/or establishment of landscape gardens, in place of the coverage of such work in Clause 4.7 (b) (viii) in the Building and Construction General On-site Award 2010. In addition, AFEI submits that a modern gardening services award should include the ability to perform ordinary hours on weekends, include provisions for the engagement of apprentices and trainees, and balance the potential cost increases to employers when setting casual, overtime and penalty rate loadings.

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