

NATIONAL FARMERS' FEDERATION

**FURTHER SUBMISSIONS ON EXPOSURE DRAFT –
PASTORAL AWARD 2010**

Date: 19 March 2018

1. On 9 February 2017 His Honour Justice Ross directed interested parties to file, on or before 4:00 pm, Monday 19 March 2018, any submissions in reply in relation to:
 - a. the intended operation of clause 17.2(c)(ii) of the Pastoral Award 2010, in particular when the second meal should be supplied or allowance is payable while working overtime;
 - b. the operation of the meal allowance provisions in clause 36, in particular the provisions contained at 36.5, 36.10, and 36.11; and
 - c. the operation of clauses 10.2(d) and 32.7 of the Exposure Draft.
2. These submissions respond to that direction and, in particular, the submissions filed by the AWU on 6 March 2018 (**the AWU Submissions**).

Response to AWU Submission — Clause 17.2(c)(ii) of the Pastoral Award

3. The AWU Submissions contend that clause 15.1 of the Pastoral Award is of no assistance in understanding the operation of clause 17.2.(c)(ii) because “the scope of clause 15.1 [is] limited to determining when an employee’s *first* meal break must be taken *during ordinary hours*.”¹
4. The NFF addresses this argument at paragraph [9.c] of our submissions of 6 March 2018. We say that
 - a. The clause is not limited in the way that the AWU contends, either expressly or by implication; that is

¹ Paragraph [6] of the AWU Submissions.

- i. The clause cannot be read as “being limited to determining when an employee’s *first* meal break”² occurs; the clause makes no reference to a numbered meal break or sequence of meal break(s).³ It simply indicates when “a meal break” must be provided.
 - ii. If we disregard the fact that the clause also allows the meal break to “be taken at a time agree”, then the AWU is correct to say that the 5 hours is the “outer limit”. However, in practice, the first meal break occurs at the end of this period of time, at or about the typical lunch time (i.e. about noon or very early afternoon).
 - b. Its operation can and should be read to prescribe each occasion on which a meal break must be provided; that:
 - i. Within 5 hours of the ordinary commencing time; or
 - ii. As agreed.
5. With respect to the AWU’s observation that “the origins of clause 17.2(c)(ii) are quite clear[ly]” a Pig Breeder Award from 1999⁴, we note paragraph [7.e] of the NFF’s submissions dated 28 August 2017. There we observed that a provision which is, for all intents and purposes, identical to clause 17.2(c)(ii) may be found in a 1946 South Australian Industrial Agreement.⁵
6. The NFF agrees with the AWU’s submission⁶ that the Poultry Farm Employees (State) Award is of limited utility in this current process. One award — applying to one state and one commodity — which had no special status in the award modernisation process is of little to no assistance.
7. The NFF disagrees with the AWU’s submission that “an ordinary reading of the clause, 17.2(c)(ii) sets the timing of the initial meal break at two hours after the overtime work begins”.⁷ In fact, the clause addresses the overtime meal *allowance*, not meal *breaks*. It specifies that the allowance/meal is to be provide if the employee works for more than

² Paragraph [2] of the AWU Submissions.

³ First, second, third, etc.

⁴ Paragraph [9] of the AWU Submissions.

⁵ Available here http://www.austlii.edu.au/au/other/sa_gazette/1946/25.pdf (on 19 March 2018); see bottom of page 24.

⁶ Paragraph [11] of the AWU Submissions.

⁷ Paragraph [14] of the AWU submissions; emphasis added.

two hours of overtime, but is silent as to if/when a break should be provided. In the NFF's view it is possible that the clause intends the employer to require the employer to bear the cost of a meal (when the employee works at least 2 hours of overtime) which the employee will eat after finishing work or when another break is provided.

8. Although clause 17.2(c)(ii) does make reference to the "2nd meal break", in our submission this is a reference a break which is provided under clause 15.1 which, again, is the only clause in the Award specifically providing for an employee to be allowed a meal break.
9. Furthermore, the AWU's contention⁸ that "the same period of overtime worked that qualifies an employee to an initial overtime meal allowance – two hours – would entitle an employee to a second overtime meal allowance" is misconceived. Not only does that interpretation not follow the language of the provision, it is divorced from reality: it is absurd to contend that employees would need and should be provided with a *complete meal* every two hours. Indeed, there is no reason to believe that the employee requires a meal more frequently during overtime hours than during ordinary hours
10. For these reasons (and the reasons set out in our submissions dated 15 August 2017, 28 August 2017, and 6 March 2016) the NFF submits that the Commission should reject the AWU's proposed draft determination.
11. It follows, that the NFF reaffirms its submission in chief. The effect of clause 17.2(c) is:
 - a. Firstly, to grant the employee a meal or allowance if the he/she works for 2 hours (or more) overtime after ceasing ordinary hours; and
 - b. Secondly, if the overtime extends into the subsequent day or, in the alternative, if the employee works for a further 5 hours.

Response to AWU Submission — Clauses 36.5, 36.10, and 36.11 of the Pastoral Award

12. The circumstances in which these clauses operate is relatively clear. In our previous submissions we contended that:
 - a. Clause 36.5 operates where the employee is working overtime "after working ordinary hours Monday to Friday".
 - b. Clause 36.10 operates on other occasions:

⁸ Paragraph [15] of the AWU Submissions.

- i. Where the employee has not worked “ordinary hours Monday to Friday”;⁹ and
- ii. The work will continue beyond the “the meal break” provided pursuant to clause 15.1(a).

It may also be observed that clause 36.10 does not provide for a meal break; merely an allowance; the meal may be taken either after work has finished or during a break provide in accordance with clause 15.1.

- c. Clause 36.11 is a ‘carve-out’ provision, specifying what occurs where notice of overtime was provided, and what occurs if it was subsequently cancelled.

13. It follows, in the NFF’s submission, that the Commission need not and should not accept the AWU Submissions made in respect of these clauses. In particular:

- a. Although there may be a modicum of repetition, clause 36.11 does not render 36.5 redundant;¹⁰
- b. The reference to “such overtime” in clause 36.6 is clearly a reference back to clause 36.5;¹¹
- c. Clauses 36.5 and 36.10 grant different entitlement because they operate in different circumstances.¹²

Response to AWU Submission — Clause 10.2(d) of the Exposure Award

14. For the reasons given above, the NFF submit that the Commission should reject the AWU’s Draft Determination and should not adopt the substance of that draft in the Exposure Draft

Response to AWU Submission — Clause 32.7 of the Exposure Award

15. Contrary to the AWU submissions, as outlined in the forgoing, it is the NFF’s contention the Exposure Draft is correct in failing to require a meal/allowance be provided when the employer gave adequate notice to the employee.

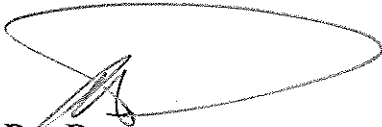
⁹ For example, when working overtime on a Saturday, when he/she is called back to work, or after hours established in accordance with clause 35.1.

¹⁰ Paragraph [23] of the AWU Submissions; c/f paragraphs 45 and 46

¹¹ Paragraph [24] to [26] of the AWU Submissions.

¹² Paragraph [29] of the AWU Submissions.

16. Contrary to paragraph 44 of the AWU submissions (and as contended in paragraph [5] of the NFF's submission of 28 August 2017) it is perfectly logical for an employer to be obliged to reimburse the employee the cost of a meal. The rationale underpinning these clauses is that employees must prepare meals for themselves where they have adequate notice of the requirement to work overtime; it is not "bizarre" for an employer to be required to reimburse the cost associated with that meal where that requirement is subsequently canceled.
17. We refer to our submission above regarding the operation of clauses 35.5, 36.10, and 36.11 with respect to paragraph [44] and [45] of the AWU Submissions.



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