



REPORT

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards (AM2014/239)

PASTORAL AWARD 2010 [MA000035]

Agricultural industry

JUSTICE ROSS, PRESIDENT

SYDNEY, 9 FEBRUARY 2018

4 yearly review of modern awards – Pastoral Award 2010.

[1] The technical and drafting issues in respect of the *Pastoral Industry Award 2010* (the Pastoral Award) were substantially dealt with in the *July 2017*¹ and the *October 2017*² decisions.

[2] In the *July 2017* and *October 2017* decisions the Full Bench dealing with the Group 3 awards expressed a number of *provisional* views in respect of the *Pastoral Award 2010* and interested parties had an opportunity to comment on the *provisional* views after they had been incorporated into the exposure draft.

[3] Aside from the *provisional* views expressed in the earlier decisions three outstanding issues remain:

- one issue related to an inconsistency between meal breaks and allowances for piggery attendants (clause 17.2(c)(ii) and 36.10 of the current award); and
- two issues related to the continuous work provisions – one related to the definition of non-continuous work (clause 31.1 of the exposure draft) and the other related to footnotes in clause B.4.2 and B.4.5 (of the exposure draft).

[4] A Statement³ issued on 20 December 2017 noted that the *provisional* views and the remaining outstanding issues would be dealt with at a conference on 9 February 2018. An

¹ [2017] FWCFB 3433.

² [2017] FWCFB 5536.

³ [2017] FWC 6871.

agenda for the conference was circulated to parties on 7 February 2018 and is attached at Attachment A. This report summarises the outcome of the conference.

1. Provision of a saddle: clauses 17.2 and 29 of the current award

[5] As discussed at the conference the following proposal is advanced for the consideration of the parties:

1. That clause 25.1 of the revised exposure draft be varied to read:

‘25.1 Where a station hand is required by the employer to find their own horse and/or saddle, the employee will be paid weekly allowances of:

(a) \$7.26 for the horse; and

(b) \$5.80 for the saddle.

The allowance specified in clause 25.1(b) is not payable where the employer has reimbursed the employee for the cost of the saddle.’

2. That there be no variation to clause 10.2(a) of the revised exposure draft (which is based on clause 17.2 of the current award).

[6] At the conference the AWU and NFF representatives indicated their support for the proposal, but they wanted the opportunity to consult with colleagues/members before expressing a final view.

[7] Interested parties are asked to respond to the proposal set out above by **4:00pm, Monday 19 February 2018.**

2. Station cooks and part-time rates: clauses 10.3 and 30.1 of the current award

[8] The background to this issue, including the Full Bench’s *provisional* view is set out at paragraphs [317]-[323] of the *October decision* (Also see [126]-[130] of the *July decision*).

[9] There was no objection to the adoption of the *provisional* view expressed in the *July decision* at [130]. No amendment is required to the exposure draft.

3. Public holidays for piggery attendants: clauses 26 and 38.3 of the current award

[10] The background to this issue and the Full Bench’s *provisional* view is set out at paragraphs [320]-[322] of the *October decision* (Also see [155]-[159] of the *July decision*).

[11] There was no objection to the adoption of the *provisional* view expressed in the *July decision* at [159]. No amendment is required to the exposure draft.

4. Outstanding issue relating to meal breaks and allowances (clauses 17.2(c)(ii) and 36.10 of the current award)

[12] The background to this issue is set out at paragraphs [285] – [292] of the October 2017 decision.

[13] In short, the Full Bench determined the operation and interaction of the two clauses is ambiguous and requires review before the Commission can be satisfied that the relevant terms achieve the modern awards objective.

[14] The interested parties have submitted draft directions for the determination of the matter. The draft directions are confirmed and attached.

5. *Definition regarding non-continuous work (inserted at clause 31.1 of the exposure draft)*
6. *Proposal to amend footnotes in clause B.4.2 and B.4.5 of the exposure draft*

[15] It was agreed that the Commission will provide a plain language draft of clause 35.9 of the current award to the parties for consideration.

PRESIDENT

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ATTACHMENT A

Agenda

Pastoral Award 2010 – Conference – 9.30 am, Friday 9 February 2018

The outstanding issues will be dealt with in the following order at the conference:

Provisional views expressed:

1. Provision of a saddle: clauses 17.2 and 29 of the current award

Provisional view expressed at paragraphs [316] of [2017] FWCFB 5536 – the October 2017 decision.

2. Station cooks and part-time rates: clauses 10.3 and 30.1 of the current award

Provisional view expressed at paragraphs [317] – [319] of [2017] FWCFB 5536 – the October 2017 decision.

3. Public holidays for piggery attendants: clauses 26 and 38.3 of the current award

Provisional view expressed at paragraphs [320] – [322] of [2017] FWCFB 5536 – the October 2017 decision.

Outstanding issue relating to meal breaks and allowances (clauses 17.2(c)(ii) and 36.10 of the current award)

4. [Submission and draft directions](#) filed jointly on 2 February 2018 (by The Australian Workers' Union, the National Farmers' Federation and Australian Business Industrial and the NSW Business Chamber)

Outstanding issues relating to the 'continuous work' provisions

5. Definition regarding non-continuous work (inserted at clause 31.1 of the exposure draft)
6. Proposal to amend footnotes in clause B.4.2 and B.4.5 of the exposure draft



DIRECTIONS

Fair Work Act 2009

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Agricultural industry

JUSTICE ROSS, PRESIDENT

SYDNEY, 9 FEBRUARY 2018

4 yearly review of modern awards - Pastoral Award 2010.

[1] Further to the Statement and Directions issued 20 December 2017, it is directed that:

1. Interested parties are to file in the Commission **on or before 4:00pm, Monday 5 March 2018** any written submissions and any evidence in relation to:
 - 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;
 - the operation of the meal allowances provisions in clause 36, in particular the provisions contained at 36.5, 36.10, and 36.11; and
 - the operation of clauses 10.2(d) and 32.7 of the Exposure Draft.
2. Interested parties are to file any written submissions in reply on or before **4:00pm, Monday 19 March 2018**.
3. Unless any party applies for an oral hearing, this matter will be determined on the papers.
4. All material should be sent to amod@fwc.gov.au
5. Liberty to apply.

PRESIDENT