

NATIONAL FARMERS' FEDERATION
FURTHER SUBMISSIONS ON EXPOSURE DRAFT –
PASTORAL AWARD 2016

Date: 20 November 2017

1. These submissions are made by the National Farmers Federation (**the NFF**) in response to the direction made by the Full Bench of the Fair Work Commission for interested parties to make further submissions on various “provisional views” set out in the Full Bench’s decision of 30 October 2017 (**the October Decision**).¹

(i) clauses 17 and 29: provision of a saddle

The NFF's Primary Submission

2. The NFF supports the Commission’s provisional view that:
 - a. where an employer pays for the purchase of the employee’s saddle, the employee is not entitled to the allowance specified in clause 29.1; and
 - b. there is no reasonable basis for AWU’s submission that, under clause 29.1 an employee should be paid a weekly allowance for the simple act of locating a saddle.
3. The NFF further notes that if the employer pays for the purchase of a horse or dog the employee has no entitlement to the allowance set out at clause 29.1 and 29.2.
4. As such, and subject to the submissions below, the NFF submits that an amendment to clause 29.1 could clarify this position and avoid further confusion.

Further submissions on the interaction of clauses 17.2(a)(i) and 29.1

5. That Primary Submission notwithstanding, respectfully, the NFF does not share the Commission’s view that pursuant to clause 17.2(a)(i) where “the employee does not own a saddle and must purchase one then the employee is to be reimbursed the cost of purchasing the saddle.”

¹ [2017] FWCFCB 5536 at [316] to [324]

6. We note that clause 17(a)(i) does not actually use the word “purchase” or the phrase “the cost of purchasing”. Instead, clause 17(a)(i) is expressed to apply whenever the employer requires its employees to “supply their own tools/equipment”, in which case the employer must “reimburse the cost of supplying such tools and equipment”.
7. In the NFF’s submission the term “supply” covers a much broader range of activities/circumstances than “purchase”. It potentially includes circumstances where the employees already own the tools/equipment which they use in the course of their work; that is, where the employees “find” (in the sense contemplated by clause 29.1) their own tools.
8. Indeed, we note that subclause 17.2(a)(ii) provides that clause 17.2 does “not apply where the tools and equipment are paid for by the employer.” Arguably, then, clause 17.2(a)(i) cannot render the employer responsible for the purchase price. Should that occur then the tools will clearly have been “paid for by the employer”.²
9. Two things follow from this analysis.
10. Firstly, the cost of “supplying” equipment for work may be considerably less than the cost of purchasing the equipment. Although circumstances will dictate the actual amount, in our view the cost of “supplying equipment” would usually be limited to the incidental costs, maintenance, and wear and tear.³ As such, the reimbursement which clause 17.2(a)(i) requires an employer to make would usually be limited to those amounts
11. Secondly, it is at least arguable that clause 17.2(a)(i) has no application in respect of saddles:
 - a. On its face, clause 17.2(a)(i) applies to the circumstances in which clause 29.1 applies⁴; i.e. where the employee must “find their own ... saddle”, the obvious difference being that where it has been enlivened, the consequences under clause 29 are more prescriptive than clause 17.2(a)(i).⁵

² Instead, clause 17.2 merely requires the employer to pay any incidental costs noted above in paragraph [10].

³ Indeed, where the employee uses the equipment for activities which are not related to employment with the employer — such as recreation or on other jobs — then the cost of supplying it for work should be considerably less than the total purchase cost, as the purchase cost should be attributed to and distributed across all activities for which the employee uses the equipment.

⁴ Although clause 17.1(a)(i) clearly also has a much more broader applicant, applying to all tools and equipment

⁵ i.e. requiring the employer to pay a pre-determined amount

- b. As such, applying the usual rule of construction, clause 29.1 — as the more specific provision⁶ — would take precedence over clause 17.2(a)(i) when an employee provides his/her own saddle for work.
 - c. That position prevails irrespective of whether the employee brings a ‘pre-owned’ saddle to work or must purchase the saddle in order to perform his/her employment duties.
12. It follows that if an employee must purchase a saddle to perform duties, he/she *will not* be reimbursed for the purchase prices but *will* be paid the allowance contemplated at clause 29.1.
13. It is worth noting that none of the pre-modernisation pastoral industry awards provided for an employer to reimburse an employee the cost of purchasing a saddle. However, all pre-modernisation awards contained a clause, like clause 29.1, which required the employer to pay an allowance when the employees provided their own saddle.⁷ In practice, this meant that if the employer needed the employee to have a saddle to do the job, the employee had to obtain it at his/her own expense; he/she would then have the benefit of the weekly allowance. We have identified nothing in the modernisation proceedings explaining that the AIRC intended to depart from that position.
14. Finally, the NFF notes that there is no requirement in clause 17.2(a)(i) for an employee to seek the employer’s authorisation or consent to the purchase of the tool and equipment. Indeed, *on its face* the employee need not even notify the employer that he/she (believes that he/she) needs a new tool and intends to buy one for the employer to become liable to reimburse him/her the purchase cost. A saddle is not an inexpensive acquisition.⁸ In the NFF’s view it defies reason for an employer to be required to, in effect, gift an employee a new saddle, potentially without having directed the employee to purchase it or perhaps even being aware that the employee is in need of a new one or having any say on the cost. Indeed, if an employer is willing and able to pay for the purchase of a saddle then the rational decision is to purchase it as an asset of the business.

⁶ That is, subclause 29.1 specifically address the circumstances of an employee providing his/her own saddle whereas clause 17.2(a)(i) applies to tools and equipment more generally

⁷ e.g. clause 37.1 of the *Pastoral Industry Award 1998*; clause 5.2.7 of the *Station Hands’ Award 2003 (Qld)*; clause 52 of the *Pastoral Employees (State) Award (NSW)*; clause 13.2 of the *Australia Meat Holdings Pty Limited Caroonna Feedlot (State) Award 1999*.

⁸ Even a very cheap stock saddle of serviceable quality costs approximately \$1,000.00 new, and a good saddle will cost more than \$3,000.00;

Additional Consideration regarding clause 29.1

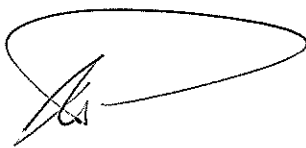
15. The NFF seeks to clarify an additional issue in relation to this clause which has recently been brought to our attention that there may be some confusion regarding the effect of clause 29.1. In particular, where an employee “finds” multiple horses/saddles in a given week — albeit they are only required by the employer to “find their own horse” — the NFF is concerned that there may be scope for the employee to claim the allowance more than once.
16. For example, an employee may choose to adgist seven horses/saddle on the employer’s property and rotates through those horse/saddle throughout the course of the week; nevertheless, provided that the employer only *requires* the employee to “find their own horse”, the employee is only entitled to the allowance once.

(ii) clauses 10.3 and 30.1: station cooks and part-time rates

17. The NFF has no objection to the provisional view the Commission expressed in paragraph [130] of it decision of 6 July 2017^[1] (**the July Decision**) and the views expressed by the AWU in its submission of 23 November 2016: the Award is clear that a part-time Station Cook is entitled to overtime in accordance with subclauses 10.3(f), 31.1 and 31.2, and the award does not require amendment.

(iii) clauses 26 and 8.3 — public holidays for piggery attendants

18. Noting only that the operation of the clause is effectively identical, the NFF does not object to the provisional view the Commission expressed in paragraph [159] of the July Decision.



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^[1] [2017] FWCFB 3433