

NATIONAL FARMERS' FEDERATION

SUBMISSIONS ON EXPOSURE DRAFT – PASTORAL AWARD 2010

Date: 26 April 2019

1. This submission responds the Commission's direction of 13 February 2019 to file submission in relation the exposure drafts of the Horticulture Award and Pastoral Award published on 15 March 2019.
2. We make the following observations in relation to the exposure draft of the *Pastoral Award 2010*.

<u>Clause</u>	<u>Observations</u>
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| 6.7(b)(i) | This clause should refer to clause 6.7(a). |
| 10.2(e) | We note that a decision in respect of meal break allowance remains is pending. |
| 19.3 | We note that a decision in respect of meal break allowance remains is pending. |
| 30.1(a) | We note that the exposure draft has retained the word “normally”, contrary to the decision expressed at [2018] FWCFB 6368 at [43]. |
| 30.2 | The NFF retains the view that clause 30.2 of the Exposure Draft constitutes a substantive change to the Award. |

The Award presently provides, at clause 35.1, that:

If an employee works less than 38 hours in one week of any four week period then the employer will use its best endeavours to ensure that the employee is paid for 38 hours work during any such week.

The equivalent “plain language” redraft provides at clause 30.2 that:

If an employee works less than 38 hours in one week in a four week period, then the employer must pay the employee for 38 hours work for that week.

The NFF expressed reservation with respect to this change in our submissions dated 13 April 2018.

In [2018] FWCFB 6368 at [47] the Full Bench expressed the view that

The wording of clause 30.2 of the plain language re-draft has been amended because the current clause is vague and aspirational in nature and does not provide an enforceable entitlement to an employee or an obligation on an

employer. In previous decisions, the Commission has declined to vary awards to insert provisions which may be characterised as 'aspirational' and which have little or no work to do. On this basis we have decided not to revert to the current award wording.

With respect, in our submission this redraft goes beyond a mere technical or drafting issue and creates a right which is qualitatively and substantially different. If read literally this change has ramification for, inter alia, the payment of part-time employees.

- 49.1(c) The exposure draft which the Commission published on 2 November 2017 provided for a shearing shed expert to be paid a loading of “~~2.630%~~ of the appropriate minimum weekly hourly rate”. However, the current exposure draft provides for a shearing shed expert to be paid a loading of “2.63% of the appropriate minimum weekly rate”. It is not clear which language is consistent with the decision which the Commission is said to have expressed on 06 July 2017 in [2017] FWCFB 3433 at [110] – [122].

Kind regards,

A handwritten signature in black ink, appearing to be 'Ben Rogers', enclosed within a large, hand-drawn oval scribble.

Ben Rogers
General Manager, Workplace Relations and Legal Affairs