4 yearly review of modern awards – Sugar Industry Award

Matter No. AM2014/247

NATIONAL FARMERS' FEDERATION

SUBMISSIONS ON EXPOSURE DRAFT – SUGAR INDUSTRY AWARD 2016

Date: 5 May 2016

1. The National Farmers' Federation (**NFF**) is the peak industry body representing Australian farmers and agribusiness across the supply chain, including all of Australia's major agricultural commodity groups.

2. This submission is in response to amended directions issued 23 March 2016 instructing interested parties to file written submissions in reply on the technical and drafting issues related to exposure drafts in Group 3 by 5 May 2016.

3. This submission deals with submissions made in relation to the proposed Sugar Industry Award 2016.

The Statutory Framework

1. Under section 156 of the *Fair Work Act 2009* (**FW Act**), the Fair Work Commission (**Commission**) is required to review each modern award in its own right every four years.

2. Section 134 of the FW Act contains the modern awards objective. Modern awards must provide a 'fair and relevant minimum safety net of terms and conditions' of employment, taking into account the following criteria:

    a. relative living standards and the needs of the low paid (subsection 134(1)(a));

    b. the need to encourage collective bargaining (subsection 134(1)(b));

    c. the need to promote social inclusion through increased workforce participation (subsection 134(1)(c));

    d. the need to promote flexible modern work practices and the efficient and productive performance of work (subsection 134(1)(d));

    e. the need to provide additional remuneration for employees working overtime; unsocial, irregular or unpredictable hours; on weekends or public holidays; or shifts (subsection 134(1)(da));

    f. the principle of equal remuneration for work of equal or comparable value (subsection 134(1)(e));

g. the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden (subsection 134(1)(f));

h. the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards (subsection 134(1)(g)); and

i. the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (subsection 134(1)(h)).

3. Under section 136, a modern award can only include terms that are permitted or required by:

   a. Subdivision B of Part 2-3 (terms that may be included in modern awards)

   b. Subdivision C of Part 2-3 (terms that must be included in modern awards)

   c. Section 55 (interaction between the National Employment Standards (**NES**) and modern awards or enterprise agreements); or

   d. Part 2-2 (NES).

4. Section 138 of the FW Act provides for modern awards to include terms that are either permitted or required to be included, but only to the extent necessary to achieve the modern awards objective and the minimum wages objective.

5. Modern award terms must not exclude the NES, or any provision of the NES (subsection 55(1)).

6. In a statement issued on 5 December 2014, the Commission indicated that the exposure drafts 'incorporate any technical and drafting changes proposed by the Commission and identify provisions that may need further review. The exposure drafts do not incorporate any substantive changes and do not represent the concluded view of the Commission on any issue.'[1] This reflects the approach taken throughout the award review stage.

Clause 3.2 - Coverage

7. We refer to paragraphs 19-21 of our submission dated 14 April 2016.

Clause 6.1(a) – Full-time employment

8. We agree with the AWU submission that the word 'maximum' could be deleted from this clause.

Clause 6.1(b) – Full-time employment

9. We do not agree with the AWU submission that the word 'seasonal' should be deleted from the definition.

Clause 6.2(e) – Part-time employment

[1] FWCFB 6188 [2014].

10. In response to the AWU submission, we refer to paragraphs 29-33 of our submission dated 14 April 2016.

Clause 6.2(g) – Part-time employment

11. We do not agree with the AWU submission in relation to this clause. Other terms of the award will have the effect of ensuring that a casual employee is paid at least the minimum hourly rate.

Clause 6.3(d)(i) – Casual employment

12. For the reasons outlined above, we do not agree with the AWU that the words 'at least' should be included in this clause.

Clause 10.2(c) – Field Sector

13. In response to the AWU's submission in relation to this clause, we refer to paragraphs 44-52 of our submission dated 14 April 2016.

Clause 10.2(d)(iii) – Field Sector

14. We agree with the amendments proposed by Ai Group for this clause and refer to paragraph 40 of our submission dated 14 April 2016.

Clause 10.3(e)(ii) – Notice of rostered days off

15. We agree with the views of Ai Group in relation to this clause.

Clause 11.1(a) – Meal breaks

16. We do not agree with the views of the Ai Group in relation to this clause. We consider that the clause should remain as is.

Clauses 11.1(a), 11.1(c), 11.1(d) and 11.1(e) - Meal breaks

17. We agree with the Ai Group submission that these clauses could be restructured to make clear that they do not apply to shiftworkers.

Clause 11.1(c) - Meal breaks

18. We agree with the Ai Group submission that the exposure draft contains a substantive change. The wording in the current award should be retained.

Clause 11.1(d) – Meal breaks

19. We do not agree with the AWU proposal to replace 'minimum hourly rate' with 'applicable rate of pay. This would introduce new complexity to the award as to the term would need to be defined and the Award already includes the terms 'ordinary hourly rate', minimum hourly rate' and (unless removed), 'standard rate of pay'.

Clause 11.1 and 11.2 – Meal break

20. The AWU submission to replace the use of 'crib' with 'meal' is not appropriate as they are different substantive concepts. The clause should be left as it is.

Clause 11.5(c) – Meal breaks on overtime

21. We support the submission of Ai Group in relation to this clause as there is clearly a substantive change that should be rectified.

22. We do not agree with the AWU submission and refer to paragraph 41 of our submission dated 14 April 2016.

Clause 12.2 – Single contract hourly rate

23. We agree with the Ai Group submission that the clause should be revised. It is not appropriate for substantive changes of meaning to result from a rewording of the award in the exposure draft process.

Clause 12.3(d) - Piecework

24. We note the submission of Ai Group and suggest that the concern could be resolved by including reference to clauses 12.3 and 12.4 in clause 12.3(d):

    'The base rate of pay in relation to entitlements under the NES for an employee on a piecework rate is the minimum wage identified in clauses 12.1, 12.3 and 12.4 for the employee's classification level.'

Clause 12.3(e) - Piecework

25. As outlined above, in response to Ai Group's submissions, a reference to clauses 12.3 and 12.4 could be included alongside the reference to clause 12.1 in this clause.

Clause 14, 17 and 20

26. We note the Ai Group and AWU's comments in relation to duplication in clauses 14, 17 and 20 and we refer to our comments at para 42 of our submission of 14 April 2016. As a general principle, duplication of entitlements should be avoided in the exposure draft.

27. We do not agree with the AWU submission that the words 'ordinary hours' should be deleted in clauses 14.1, 17.1 and 20.1. There is no doubt under the award that an employer has an obligation to pay employees for any overtime to which they are entitled.

Clause 17.4 – Absences form duty under an averaging system

28. We note the submission of the AWU. In our view it is clear that this clause only applies in relation to Part 5 of the Award (that is, milling, distillery, refinery and maintenance operations.

Clause 26.5(b) – Afternoon and night shift allowances – other than field sector

29. We note the submission of the AWU and consider that this clause does not prohibit the working of continuous night shifts in the absence of a specific reference to them.

Clause 26.9 – Nominal crushing season – shift work

30. In our view, the Fair Work Commission has power to approve a roster system through a consent arbitration under section 595(3) or section 739(4) of the FW Act.

Clause 26.10(g) – Nominal slack season - shiftwork

31. We agree that the figure here should be 20% instead of ‘one fifth’.

Sarah McKinnon
General Manager, Workplace Relations and Legal Affairs
5 May 2016