

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission on Draft Determination

Horticulture Award 2010
(AM2014/231 & AM2016/25)

7 December 2017

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2014/231 & AM2016/15 – HORTICULTURE AWARD 2010

1. On 16 November 2017, a Full Bench of the Fair Work Commission decided to vary the *Horticulture Award 2010*, retrospective to 1 January 2010 ([2017] FWCFB 5536).
2. At paragraphs [172] to [174] of the Decision, the Full Bench set out the terms of a Draft Determination, as reflected in the Draft Determination in **Attachment A** to this submission.
3. The Draft Determination is in the terms sought by Ai Group and we strongly support the wording.
4. The submissions of Ai Group and other employer parties, as well as the evidence in the case, identify the compelling reasons why the Draft Determination has substantial merit and is consistent with all requirements of the *Fair Work Act 2009*.



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Horticulture Award 2010

(AM2016/25)

VICE PRESIDENT CATANZARITI

DEPUTY PRESIDENT SAMS

COMMISSIONER SAUNDERS

SYDNEY, ___ DECEMBER 2017

4 yearly review of modern awards – Horticulture Award 2010

A. Further to the decision issued on 16 November 2017¹ it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Horticulture Award 2010*² be varied by:

1. Inserting a new definition of ‘enterprise’ in subclause 3.1 as follows:

Enterprise means a business, activity, project or undertaking, and includes:

- An employer that is engaged with others in a joint venture or common enterprise; or
- Employers that are related bodies corporate within the meaning of section 50 of the *Corporations Act 2001* (Cth) or associated entities within the meaning of section 50AAA of the *Corporations Act 2001* (Cth).

2. Inserting a new definition of ‘horticultural enterprise’ in subclause 3.1 as follows:

Horticultural enterprise means an enterprise which as an important part of its enterprise engages in the raising of horticultural crops.

3. Deleting subclause 4.2 and inserting a new subclause 4.2 as follows:

4.2 Horticulture industry means:

- (a) the sowing, planting, raising, cultivation, harvesting, picking, washing, packing, storing, grading, forwarding or treating of horticultural crops in connection with a horticultural enterprise; or

¹ [2017] FWCFB 6037

² MA000028.

- (b) clearing, fencing, trenching, draining or otherwise preparing or treating land or property in connection with the activities listed at 4.2(a).

4. Deleting subclause 4.3 and inserting a new subclause 4.3 as follows:

4.3 Horticulture industry does not mean:

- (a) the wine industry;
- (b) silviculture and afforestation;
- (c) sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals;
- (d) any work in or in connection with cotton growing or harvesting; cotton ginneries and associated depots; cotton oil mills and the extraction of oil from seed; or
- (e) plant nurseries

B. This determination comes into effect on 1 January 2010.

VICE PRESIDENT

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