
IN THE FAIR WORK COMMISSION

Matter No: B2019/5259

Matter Name: Review of Certain C14 and C13 Rates in Modern Awards ("**Review**")

SUBMISSIONS IN REPLY ON THE HORTICULTURE AND PASTORAL AWARDS – THE AUSTRALIAN WORKERS' UNION

1. The Australian Workers' Union ("**AWU**") makes the following submissions in reply to those made on behalf of the Australian Fresh Produce Alliance ("**AFPA**"), by the National Farmers' Federation ("**NFF**") and the Australian Industry Group ("**AIG**"), each concerning the *Horticulture Award 2020* ("**Horticulture Award**") and dated the 27th of September 2024, and those of the NFF dated 27th September 2024 concerning the *Pastoral Award 2020* ("**Pastoral Award**").
2. The AWU refers to, and continues to rely on the following:
 - Its earlier submissions in the Review on the Horticulture and Pastoral Awards, dated 3 November 2023, and
 - The witness statements of:
 - Mr Shane Roulstone (AWU National Organising Director), dated 3 and 29 November 2023,
 - Mr Steven Carter (AWU, NSW North Coast Organiser), dated 2 November 2023, and
 - Mr Anthony Beven (AWU, Tasmanian Branch, Organiser), dated 2 November 2023.

Horticulture Award

AFPA's Submissions

3. The AWU opposes, and requests that the Fair Work Commission ("**Commission**") rejects:

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- (i) AFPA's position expressed in paragraph 10, that, concerning the Draft Determination published by the Commission on the Award with its August Statement, seasonal workers should be excluded from the transition from Level 1 to Level 2;
 - (ii) Its proposed amendments to clauses A.1 and A.2 of the Award set out at Annexure 1 to its submissions and
 - (iii) Its "primary position", set out in paragraphs 12 and following, that seasonal workers engaged on a temporary basis to primarily perform fruit and vegetable picking tasks should remain at Level 1.
4. Noting AFPA's characterization of the horticulture industry in paragraph 15 of its submissions, the AWU cannot see how the specific industry features set out in (a) through (f) of that paragraph justify temporary seasonal workers being prevented from progressing beyond Level 1 under the Award.
 5. Particularly in light of the transient and temporary nature of work in the industry, seasonal workers on a new engagement will overwhelmingly have at least basic proficiency and prior experience, whether in that season, in a particular picking window, or in a previous season/s. Preventing these workers from progressing beyond Level 1 fails to acknowledge this proficiency and previous experience.
 6. In paragraph 19 of its submissions, AFPA also claims that the exclusion of seasonal workers from the provisions transitioning from Level 1 to Level 2 would continue to meet the requirements of the "confirmed view" expressed in the Commission's April 2024 Decision.
 7. The AWU cannot see how AFPA reaches this conclusion, especially when one aspect of the confirmed view¹ is:

...

b) any classification rate in a modern award which is below the C13 rate (including the C14 rate) must be an entry-level rate which only operates for a limited period and provides a clear transition to the next classification in the award (which must not be less than the C13 rate); and

¹ *Review of C14 and C13 Rates in Modern Awards [2024] FWCF 213*

...

8. Considering the prior experience often obtained by seasonal workers as expressed above in 5, the AWU submits that these workers must be entitled to a rate beyond “entry-level”.
9. For the same reason, the AWU also opposes, and requests that the Commission reject the submissions made by AFPA in the alternative at 22 to 24, concerning progression to Level 2 based on experience at a particular task (outlined at 25 to 30), or with a particular employer (set out at 31 to 36), and the proposed amendments to clauses A.1 and A.2 of the Award set out in Annexures 2 and 3 respectively.
10. In addition, the AWU submits that the clarifications proposed by AFPA at 37 of their submissions and the amendments to the Award set out in Annexure 4 are wholly unnecessary.

NFF's Submissions

11. For the reasons set out in paragraph 5 of these submissions, the AWU considers that an employee would have, consistent with the reference in paragraph 11 of the NFF's submissions, at least a “solid, albeit basic understanding of the job”, and disputes the NFF's contention in paragraph 12 that any previous fruit or vegetable farm experience would not represent “experience to enable the performance of the work” to justify progression from Level 1 to Level 2.
12. To that end, the AWU opposes, and requests that the Commission reject the so-called “convenient approach” proposed by the NFF at paragraph 13, reflected in the proposed amendments to clause A.1.2 of the Award at paragraph 14, in which experience working with (a) tree crops and (b) ground and field would be distinguished.
13. Contrary to paragraphs 15 and following in the NFF's submissions, the AWU opposes, and requests that the Commission reject the assertion that the reference in the Award to 3 months' experience in both the Commission's August statement and the draft determination for the Award is uncertain and requires clarity.

Whether continuous or not, or the equivalent time, for instance, expressed in weeks, days and/or hours, the AWU submits that the reference to 3 months' experience is sufficiently clear.

14. Beyond it being unnecessary, a definition of 3 months in hours as proposed by the NFF at paragraph 20., would likely place an unjustifiably significant practical and administrative burden on employees to demonstrate the performance of 494 hours.

15. In addition, the AWU opposes, and requests that the Commission reject the NFF's proposed cap of 3 years on how far back in time "the experience" was obtained, as set out in paragraphs 26 to 28 and based on the assumptions set out in paragraph 24.

This proposal would only devalue the skills and knowledge obtained by employees in previous experience, and ultimately undermine the capacity of the Award to provide an effective safety net.

AIG's Submissions

16. To the extent that the AIG's submissions at paragraph 6 and paragraph 7 respectively express similar contentions to those of the NFF in their submissions concerning previous industry experience, namely that it should be distinguished by:

- (i) Reference to crop (paragraph 6) and
- (ii) A requirement of recency with a temporal limitation, for instance 12 months,

the AWU considers, consistent with the reasons outlined above, that it is unnecessary for the Commission to further define the reference to 3 months industry experience in any of these ways, and that the Commission should reject these contentions.

Pastoral Award

NFF's Submissions

Industry Experience

17. The AWU opposes, and requests that the Commission rejects the contentions expressed between 30. and 36. concerning the definition of "pastoral industry" in the Pastoral Award, in particular, the proposal in 35. to include a "Note of clarification" to ensure that the term "industry" is applied relatively tightly.

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18. Not only is such an amendment unnecessary and unjustified, but, would fundamentally and unhelpfully revise references to “industry” existing elsewhere in the Pastoral Award, especially, but not limited to the classification provisions in clauses 31, 36 and 45.
19. In addition, AWU submits that the Commission should reject the submission at 38. that a 3-year time limit should apply to the working “experience” of an employee for the purposes of the transition arrangements, which entirely devalues the skills and experience obtained by employees over their work history.

Transition Between FLH1, FLH2 and FLH 3 – Broadacre and Livestock Operations

20. Noting the contentions made between 39. and 44., the AWU does not consider, and requests that the Commission reject the proposals referenced at 42. and 44., which would have the effect of requiring certain station hands, station cooks, station cook’s offsidiers, dairy operators and cattle farm workers to have up to 12 months experience before transitioning between classifications.

Such proposals are not only unnecessary, but would be inconsistent with the confirmed view² and other classifications within the Pastoral Award which feature a 3 month transition period, for instance for a feedlot employee Level 1 (clause 31.2(b)) and a piggery attendant Level 2 (clause 36.3(a)).

Assessment of Industry Experience for PA1 – Part 7 Pig Breeding and Raising

21. Contrary to the contentions expressed at 45. to 49., the AWU considers that the Commission should reject the recommendations offered in 47. and 50, as the proposed 6 months transition period would not be more appropriate.

There is no reason why employers couldn’t complete the “typical introductions and “on boarding processes” outlined in 47. as being required in piggery enterprises within a 3-month period.

² *Review of C14 and C13 Rates in Modern Awards [2024] FWCF 213*

Time of Commencement

22. The AWU fundamentally rejects, and contends that so should the Commission, the submission at 56, for the reasons expressed at 52. to 55., that any wage rises flowing from the outcome of the Review in so far as the Pastoral Award is concerned should be delayed beyond 1 January 2025.

Any delay in the payment of these wage rises would deny, as required by s157(1) of the Fair Work Act, the entitlement of employees under the Pastoral Award to a fair and relevant minimum safety net of terms and conditions to employees at the earliest opportunity, and be completely inconsistent with the timing of application of the Review outcomes to other awards.

THE AUSTRALIAN WORKERS' UNION

25 October 2024.