

Fair Work Commission
Level 10, Terrace Tower, 80 William Street
EAST SYDNEY NSW 2011
Via email: AMOD@fwc.gov.au

29 August 2017

Re: AM2014/239 Pastoral Award 2010

BACKGROUND

1. The President, Justice Ross, issued a Statement on 24 July 2017 that included directions for interested parties to file written submissions in reply in relation to the operation of particular clauses in both the *Pastoral Award 2010* ('Pastoral Award') and the Exposure Draft for the Pastoral Award ('Exposure Draft').
2. The following parties filed submissions:
 - 2.1. Australian Workers' Union (AWU);
 - 2.2. Australian Business Industrial & NSW Business Chamber (ABI); and
 - 2.3. National Farmers' Federation (NFF)
3. The Australian Workers' Union submissions in reply appear below.

REPLY SUBMISSIONS

Australian Business Industrial & NSW Business Chamber

4. We note that ABI does not oppose the amendment to the first aid allowance provision proposed by The AWU.¹
5. We agree with ABI that clause 15.1(a) of the Award does not assist in determining subsequent overtime meal breaks, as this clause applies to 'ordinary

¹ ABI submission, [9]

² ABI submission, [18]

hours of work². As we have previously submitted, overtime work necessarily falls outside the scope of 15.1(a), leaving it no work to do in instances of determining when an overtime meal allowance is payable³.

6. We note that although ABI is not incorrect in stating that by excluding 36.5 from the Award in creating 32.7 of the Exposure Draft 'overcomes the confusion⁴' that exists in the Award between clauses 36.5, 36.10 and 36.11, it does so at a price. That price is two-fold: firstly, the entitlement to an overtime meal or meal allowance for planned overtime is removed. Secondly, the entitlement to a subsequent meal or meal allowance during overtime is also removed.
7. The removal of the above entitlements is without merit. Convenience for the parties involved in the review process is not a valid justification for a reduction in conditions for those covered by the Award. The Exposure Draft may have 'resolved' the conflict, but this has been done in error as it deprives those covered by the Award of conditions they are currently entitled to. A provision must be inserted in the Exposure Draft in order to ensure entitlements in the Award are retained.

National Farmers' Federation

8. The AWU notes that generally, the NFF submission is void of substantive argument and is instead rooted solely in the author's imaginings of how they would *prefer* the Award to operate. The NFF submission seems infected with an overwhelming bias and the conflation of two discrete entitlements in the Award.
9. That being the case, we oppose the entire NFF submission. Instead of relying on the origins of the provisions or common practices within the industry to determine the operation of the clauses in issue, the NFF submission creates some extremely tenuous links between provisions in the Award to arrive at conclusions that appear to be preconceived.
10. The NFF submission significantly conflates the discrete provisions of meal breaks and meal allowances, introducing a number of new and completely unnecessary variables to determining when the entitlement of a subsequent or

² ABI submission, [18]

³ AWU submission, [7]

⁴ ABI submission, [28]

second meal allowance for employees working overtime accrues.

11. By using 15.1(a) as a reference point, the NFF has ignored that these clauses pertain to two entirely different entitlements: clause 15 deals with breaks, and clause 17 with allowances.
12. Additionally, the NFF's 'preferred position' that the entitlement to a subsequent meal allowance only accrues if the overtime 'rolls over into a second day'⁵ is somewhat bizarre.
13. The NFF's 'alternative position' is that meal breaks and meal allowances are payable every 5 hours. In order to 'prove' its alternative hypothesis that 17.1(c)(ii) is 'premised on the notion' that meal breaks and meal allowances are payable every 5 hours⁶, the NFF bases the hypothesis around ordinary hours being 8 per day.
14. Despite the premise of 15.1(a) determining all meal breaks and meal allowances alone being infected by the conflation of the two entitlements and also being somewhat fanciful, this hypothesis conveniently ignores the fact that the Award allows for ordinary hours to be worked less than, or in excess of, 8 hours per day. Using the same approach with a working day that consists of ordinary hours of any number other than 8 causes this hypothesis to fall apart.
15. Although a certain amount of bias is to be expected from parties according to their interests, the NFF submission is so obviously skewed and far-fetched that The AWU questions its usefulness in assisting the Commission in deciding the present issue.

Yours faithfully,



Zachary Duncalfe
NATIONAL LEGAL OFFICER
The Australian Workers' Union

⁵ NFF submission, [28]

⁶ NFF submission, [11]