

4 yearly review of modern awards –Pastoral Award

Matter No. AM2014/239

NATIONAL FARMERS” FEDERATION

**FURTHER SUBMISSIONS ON EXPOSURE DRAFT –
PASTORAL AWARD 2016**

Date: 26 October 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 responds to Directions issued by the Fair Work Commission (**Commission**) on 5 October 2016 asking the parties to file written submissions and any evidence in support of the outstanding claims identified in their submissions filed on 28 September.

Hours of work in the Pastoral Industry

3. A number of the issues below relate to the interpretation of hours of work provisions in the *Pastoral Award 2010 (the Award)*.
4. Under the Award, an averaging of hours arrangement applies whereby an employee can work up to 152 ordinary hours over a four week period. There are no span of hours restrictions on this arrangement, and ordinary hours can be worked on any day of the week. Once an employee has worked 152 hours in a four week period, any additional hours are worked as overtime and treated accordingly.
5. Under subclause 30.1 of the Award, the employer and a farm and livestock hand can agree on the average ordinary working hours to be worked each week. Such an agreement can be for less than an average of 38 hours each week, but consistent with the National Employment Standards (NES), it cannot be for more than an average of 38 hours per week “over a four week period”.
6. Subclause 30.2 clarifies that ordinary hours of work must not be more than 152 hours over any consecutive period of four weeks.
7. Similar arrangements apply to piggery attendants under clause 35.1 of the Award. However, additional restrictions on the hours that can be worked over a four week period also apply (see Statement of Keith Rice).
8. The ordinary hours of work for poultry farm workers are provided at subclause 41.1 of the Award. Ordinary hours must not exceed an average of 152 in a consecutive four week period.

9. The need for flexibility of hours in pastoral industry has long been recognized in the Award and its previous iterations.

10. In 1917 Justice Higgins explained as follows:

“There is a claim, as to most of the station hands, that the hours be not more than 48 in any one week, and that work cease at noon on Saturdays. The claim seems, on its face, to be delightfully simple, as well as the claim for overtime at the rate of time and a half; but when one tries to apply the limitation of hours to the conditions of boundary-riders, musterers, lamb-markers, &c, an extremely difficult problem is raised. How is it possible to apply the 48-hours week to men who are not seen for a week or weeks by the employer or his overseer, or about the homestead, and who must do whatever is necessary for the stock or the fencing as circumstances demand or permit.”¹

11. Similar findings were made in New South Wales in the *Pastoral Employees (State) Award* NSW in 1955 in relation to averaging of hours over a four week cycle:

“...true it is there are certain duties connected with grazing properties which require some amount of “give and take”.”²

12. In 1967, Commissioner Donovan varied the federal Pastoral Industry Award 1965 and consolidated terms dealing with Hours of Work, Overtime and Sunday Work.³ In his decision, he stated:

“I am satisfied after considering the submissions of the representatives of the parties in relation to claims for overtime that it is desirable in the somewhat unusual circumstances of this industry for such claims to be made within two weeks after the overtime was alleged to have been performed or by the next date of payment of the employee’s wages, whichever is the latter.

After considering the extensive and substantial material placed before me of the Industry’s experience since I have fixed working hours for a station hands in 1957 and then removed from the Award a provision similar to the new sub-clause (f) of this clause, I am now satisfied that the inclusion of such a sub-clause is necessary to end disputation between the parties.”

13. In 1969, the Australian Workers Union (AWU) raised a dispute over its claim for a 40 hour week and different overtime provisions in the Award. Dealing with the claim, a Full Bench of the Commission stated:⁴

“The Pastoral Industry Award contains unusual provisions for the hours of work, overtime and Sunday work of station hands. Amongst other things the relevant clause provides for a 44 hour week spread over five and a half days, it has no daily spread of hours, time off is permitted in lieu of payment for overtime and an employee must notify his employer within a given period that he has worked overtime. There are different and special provisions for station cooks. This is enough to show how

¹ (1917) 11 CAR 389.

² The President and Weir J, NSWAR Vol LIV Part 5, p 623.

³ (1967) 121 CAR 454, 475.

⁴ (1974) 132 CAR 671 at 672.

significantly this clause differs from those normally found in awards for secondary industry."

14. The Commission commented on the difficulty of adopting a daily spread of hours in the predecessor Award:⁵

"... we cannot find any way to provide a daily spread of hours which would not either be too long or would cause a Pastoralist, particularly in the dry hot parts of the pastoral zone, becoming involved in the payment of overtime although less than eight hours might in fact be worked on a particular day. In the pastoral zone on hot days, men may start at a very early hour in the morning, work until 9 or 10am and then rest until late in the afternoon when they would resume their work, particularly the droving of stock. Given a spread of even 12 hours, such station hands might work overtime although the time actually worked on the day might be only seven or eight hours. We even contemplated having a spread of hours from sun up to sun down but considered such a provision would be more fruitful of dispute than having no spread. Accordingly, we make no provision for a daily spread of hours."

15. The Full Bench went on to say:

"The present award requires that an employee must make a claim for overtime before he becomes entitled to payment or time off. We think in the peculiar circumstances of this industry, this is desirable from the point of view of both the employee and the employer. This is not an industry in which the work of the station hand is or can be closely supervised nor can an employer tell whether or not an employee has worked overtime, and in any event it is desirable that such claims should be made known within a reasonable time to the employer so that there can be no dispute thereafter."

16. Substantially the same approach to Hours of Work, Overtime and Sunday Work provisions remains in the Award today.

17. In June 1987, Commissioner Merriman made the Pastoral Industry Award, 1986 and replaced terms providing for 44 ordinary hours per week with terms providing for 160 ordinary hours in any consecutive period of four weeks to be worked either on Monday to Friday or Monday to Saturday morning.

18. In 1998 the Award was amended and re-titled the Pastoral Industry Award 1998. The limitation on days of work was removed on the making of this Award in response to agreement between the AWU and NFF, meaning that ordinary hours could now be worked on any day of the week.

19. In 2000, in *Mark Campbell v Berong Poultry Farms Ltd*⁶ the then Chief Industrial Magistrate of New South Wales considered a challenge from the AWU to the averaging arrangement of 152 ordinary hours over a four week period.

20. The union argued that Sunday penalty rates were "stand alone" rates and not able to be counted as part of the 152 ordinary hours over four weeks.

21. The Magistrate held as follows:

⁵ 1971 (139 CAR 212) at 216.

⁶ *Mark Campbell v Berong Poultry Farms Pty Ltd* (2005), GA Miller.

“The rates for work on any day including Sunday, are only attracted if the work performed is overtime (ie in excess of the 152 hours worked over four consecutive weeks) and double time only applies in respect of such work performed on Sunday which does not involve feeding or watering of stock.”

22. These findings are consistent with the proper interpretation of the Award. Ordinary hours of work can be worked on any day, Monday to Sunday. Once 152 hours have been worked in any four week period, additional hours of work are overtime and treated accordingly.
23. To aid understanding, in 2010, the NFF and the Fair Work Ombudsman prepared a joint fact sheet dealing with averaging of hours arrangements under the Award.
24. While technology has modernised the pastoral industry to some degree, much of the work done in 1967 is still done today. Livestock must still be tended and many agricultural pursuits (such as droving, grazing, or working to the conditions) remain the same. In rural and remote areas, access to internet and mobile phone coverage is limited. The considerations supporting the need for flexibility in hours of work under the Award are as relevant today as they ever were.

Issues Outstanding

Item 10: Clause 6.1 – Types of employment

25. The NFF is concerned that the inclusion of a new term defining “types of employment” in the Award duplicates existing terms and may have unintended consequences. Minor amendments to improve clarity will suffice to ensure that pieceworkers are able to be appropriately categorized under the Award.
26. By definition, “pieceworkers” are engaged by the piece rather than on an hourly basis.
27. However, the new term limits the categories of employment under the Award. Clause 10.4(c) of the current award provides as follows:

“A casual employee other than a casual pieceworker must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed plus 25%.”
28. The exception for “casual pieceworker” is not found in proposed clause 6.1 of the Award.
29. To deal with this concern, the NFF proposes the following amendments:

“6.5(a) Except in the case of pieceworkers, a casual employee is an employee engaged as such and paid by the hour.

6.5(b) Except in the case of pieceworkers, an employee who does not meet the definition of a part-time employee in clause 6.4(a) and who is not a full-time employee will be paid as a casual employee in accordance with clause 6.5.”

Item 11: Clause 6.3(a) – Full-time employment

30. We note that the parties agreed to include the words “an average of” in proposed clause 6.3(a). The revised exposure draft reflects this position.

Item 18: Clause 6.6(a) – Farm and livestock hand at shearing or crutching

31. The NFF presses for the retention of wording currently found in subclause 10.5 of the award, which is simpler and easier to understand than proposed subclause 6.6(a) of the Exposure Draft.

Item 30: Clause 10.2(d) – Overtime meal allowance

32. We have previously observed that these terms have limited relevance in the pastoral industry in circumstances where ordinary hours of work are averaged over a four week period. Averaging of hours in the pastoral industry reflects the need for flexibility in work arrangements as set out above.
33. Nevertheless, proposed subclauses 10.2(d)(i) and (ii) overlap considerably, with one imposing an obligation to provide meals after 1.5 hours overtime and the other providing to similar effect after 2 hours overtime.
34. Similar provisions in other parts of the Award provide for a meal or meal allowance after 2 hours overtime, in each case of the same amount.⁷ This approach should be adopted generally in the Award for all industries, unless there is a particular historical reason to retain the existing terms in full.

Item 41: Clause 24.2 – Junior Wages

35. The NFF withdraws this claim.

Item 42: Clause 24.3 – With keep rate

36. As set out in our submission of 8 July 2016, the NFF is not opposed to the proposed amended wording of clause 24.3 as set out in the latest version of the Exposure Draft.

Item 45: Clause 26.3 – Station cooks

37. As outlined in our submission of 14 April 2016, the NFF considers that the words “appropriate weekly rate” in clause 26.3 of the exposure draft should not be changed to the “FL1 ordinary hourly rate” as the weekly rate includes keep, while the FL1 ordinary hourly rate does not.
38. Changing the clause in the manner suggested would have the unintended consequence of deducting keep from a station cook’s wages, which has never been the intention. Station cooks have always been entitled to provision of keep without charge.
39. The clause should be left as it is in the exposure draft or the matter clarified.

⁷ Clause 32.7, Exposure Draft 17 August 2016.

Item 49: Various clauses – Overtime and penalty rates

40. In our submission of 14 April 2016, the NFF identified various clauses and tables that imply that all hours worked on weekends are overtime hours. As detailed at the outset of this submission, overtime only applies after 152 ordinary hours have been worked in a period of four weeks (with the exception of piggery attendants).
41. To the extent that they deal with piggery attendants, the NFF withdraws its submissions in relation to clauses 32.2, 33.1 and schedules B.4.1, B.4.2 to B.4.5 identified at paragraph 68 of our submission of 14 April 2016.
42. Otherwise, our position remains the same. The tables setting out rates of pay should accurately reflect the fact that overtime penalties only apply once 152 ordinary hours over a four week period have been worked. The NFF has proposed amendments to this effect in our submission of 14 April 2016.

Item 55: clauses 31.1 and 31.5 – Shiftwork definitions

43. The AWU proposed a new definition for “non-continuous work” and a revised definition of “non-successive shifts”.
44. The issue arises from the inclusion of a new definition of “non-continuous work” in the exposure draft at clause 31.1(c). The current award defines “continuous work” but does not use the term “non-continuous work” but rather contains the subclause “other than continuous work hours” in 35.6.
45. To address this, the NFF proposes that the exposure draft should be amended to reflect the current award arrangements. To achieve this the award would be amended as follows:
 - a. Delete subclause 31.1(c) from the exposure draft.
 - b. Delete subclause 31.5 from the exposure draft and insert clause 35.9 from the current award.

Item 58: Clauses 32 and 33 – Overtime and penalty rates; Saturday and Sunday Penalty rates

46. The NFF proposes the following typographical corrections to subclauses within clauses 32 and 33:
 - 32.1** All time worked by piggery attendants before the ordinary commencing time or after the ordinary finishing time or in excess of ordinary hours ~~of work in any one day or in any one week~~ will be regarded as overtime.
 - 32.7(b)** Where an employee is notified the day or days prior ~~to an~~ *that* overtime *will be required*, the meal allowance is not payable unless the overtime is cancelled. Where cancellation occurs and notice of cancellation is not given at least the day before the planned overtime, the employee ~~with~~ *will* be paid ~~the~~ *a* meal allowance

33. Saturday and Sunday ~~penalty rates~~ work

~~33.1~~ For work performed by piggery attendants on a Saturday or a Sunday, the following rates apply. Overtime worked on weekends will be paid at the following rates:

For time worked after 152 hours in any 4 week period:	Penalty rate % ordinary hourly rate
Day workers	
Saturday – ordinary hours	150
Saturday—ordinary hours worked by agreement First 2 hours of overtime	150
Saturday – After the first two hours of overtime	200
Sunday— all hours overtime	200
Shiftworkers	
Saturday ¹	150
Sunday—continuous shifts ²	200
¹ Provision in substitution for and not cumulative upon shift allowances in clause 31.5. ² Where the major portion of the rostered shift is on a Sunday.	

Item 59: Clause 32.2 – Overtime and penalty rates

47. After further consideration, the NFF amends our claim with respect to clause 32.2 as follows:

32.2 Subject to clause 33, overtime will be paid at the following rates:

For overtime worked Overtime after 152 hours in a 4 week period	Overtime rate % ordinary hourly rate
Monday to Saturday Any day — f First two hours	150
Monday to Saturday Any day — a After first two hours of overtime	200
Sunday—overtime	200

48. This proposed amendment will align the table with the current award terms and assist to avoid misunderstanding about when overtime rates must be paid.

Item 60: Clause 32.3 – Overtime and penalty rates

49. As outlined in our submission of 14 April 2016, the NFF proposes that subclause 32.3 be moved to clause 33 as this refers directly to Saturday and Sunday overtime rates.

Item 62: Clause 32.8 – Overtime meal allowance

50. The NFF’s submissions on this issue are outlined above at item 30.

Item 65: Clause 34 – Payment for public holidays

51. Overtime worked on public holidays is paid at the overtime rate, calculated as the minimum hourly rate with the relevant overtime loading applied.

52. This is consistent with other terms of the current award. For example, subclause 38.3 of the current award provides for time off instead of payment for public holidays and clarifies “that is, the employee will receive ordinary time payment for the hours worked on the said holiday and accrue time to be taken at a mutually agreed time.”

Item 66: Clause 36.2 – Junior wages

53. As noted above at item 41, the NFF withdraws this claim.

Item 84: Clause 41 – Special allowances (other than Woolclassers and Shearing shed experts)

54. The word “home” has been removed from clause 41.1 of the Exposure Draft. The Exposure Draft clause would not apply to a circumstance where an employee returns to their home for work, which is not their usual place of residence at that time.

55. As outlined in our previous submission dated 28 September 2016, the legal dictionary defines residence as “personal presence at some place of abode” and indicates that “although the domicile and residence of a person are usually in the same place, and the two terms are frequently used as if they have the same meaning, domicile means living in that locality with the intent to make it a fixed and permanent home. Residence merely requires bodily presence as an inhabitant in a given place.”

56. The term “home” was inserted into the Pastoral Industry Award 1965 by Justice Gaudron on 23 October 1975, to supplement the phrase “usual place of residence”.

57. As was made clear in that decision, while a person’s home and usual place of residence will often mean the same thing, this is not necessarily the case. Shearing is a form of employment that is traditionally associated with an expeditionary lifestyle where employees move around throughout the year for work and may establish a usual place of residence that is away from their home.

58. This is confirmed by the decision in *Russell Kerry Collison, Secretary, Australian Workers Union, Greater NSW Branch, On Behalf of Stewart Batey v Coachdale Pty Ltd*⁸ where a shearer, Mr Batey moved around for shearing and travelled from his home that he shared with his wife in Warwick to stay at a hotel in Walcha for the purposes of shearing over the course of the year, travelling away from here

⁸ *Russell Kerry Collison, Secretary, Australian Workers Union, Greater NSW Branch, On Behalf of Stewart Batey v Coachdale Pty Ltd* [2005] NSWCIMC 150.

occasionally for other jobs. After he separated from his wife he moved to Seymour, spending some time there and also living in a three bedroom house in Walcha for a significant portion of the year.

59. In assessing whether Mr Batey was entitled to an allowance for this accommodation, the Magistrate placed weight on the distinction between suburban and expeditionary shearers stating “as a professional shearer, Mr Batey was itinerant, and thus his “usual place of residence” was wherever he was staying for work purposes.”

60. He went on to explain:

“In any case, Clause 25.1 refers in the alternative to “home” or “usual place of residence” so even if Warwick was Mr Batey’s “home” at relevant times, and Seymour was his “home” in 2001, these were certainly not “his usual place of residence”. But even if “home” is all that is required for the clause to be satisfied in this case, Warwick and Seymour were not his “home” during the shearing or crutching.

What is a person’s “home” or “usual place of residence” must be judged objectively, not on what they assert to be the case; the fact that they are named on the title of a property, or pay rates at a property, or have their mail sent to a particular address, does not make such a place that person’s “home” or “usual place of residence”.

61. As the word “home” was inserted into the award intentionally, the NFF is concerned that its removal would have the effect of expanding the scope of the allowances to which it relates. Accordingly, we seek to retain the term “home” in the proposed clause.

Item 86: Clause 42.3(a)(ii) – Allowance for delays for Woolclassers paid at piecework rate

62. As noted in our submission dated 28 September 2016, the NFF and AWU have agreed to the following alternative wording to “act of God”:

42.3 Allowance for delays for Woolclassers paid at piecework rate

(a) ...

(ii) the failure to start is not caused by wet weather or other unforeseen ~~natural~~ causes such as fire, flood, or earthquake.

Note: Abbreviated for ease of reading

63. This alternative form of wording will ensure that fires that are deliberately lit will continue to be covered by the revised clause.

Item 95: Schedule A/1/2 – Minimum wages

64. As noted in our submission of 28 September 2016, Schedule A.1.2 should clarify that the deduction is “per day”. The daily “found” deduction should be \$29.85.

65. Clause 40.3(d) should also be amended in the same way, in relation to crutching. A further identical provision should be inserted above proposed clause 40.3 in relation to shearing (see current clause 45.1(h) of the Pastoral Award).
66. Historically, the Wage Rates and Ready Reckoner circular outlined clearly that the “found” deduction was “per day”.⁹
67. In the current award, the “found” deduction is \$29.85. The rate for engagement by the day is:
- a. \$219.14 if not found employee;
 - b. \$189.29 per day if found employee.
68. The difference between the two is \$29.85, supporting the proposition that the “found” deduction is “per day”.

Item 106: Schedule B.6.2 – Full-time and part-time junior poultry farm worker employees – ordinary, penalty rates and overtime

69. As outlined above, poultry farm workers are employed under an averaging of hours arrangement and therefore, the tables in the schedule should reflect this to ensure that the Award is simpler and easier to understand.

Item 107: Schedule B.6.3 – Casual junior poultry farm worker employees – ordinary, penalty rates and overtime

70. As outlined above, poultry farm workers are employed under a averaging of hours arrangement and therefore, the tables in the schedule should reflect this position.

Item 108: Schedule B.8 – Shearing operations - shearers

71. The tables at Schedule B.8 are highly complex and consideration should be given to omitting this table given its complexity and propensity to confuse.

Item 109: Schedule B.8.2 – Casual crutchers – not found – ordinary and penalty rates

72. The comments above in relation to item 108 also apply here.
73. We note that AWU and NFF have agreed that the rates for crutching of rams and ram stages should be inserted into the Award. The agreed position is not yet reflected in the Exposure Draft.

Item 111: Schedule C.2.2 – Adjustment of expense related allowances

74. As noted in previous submissions, the reference to “all groups” has potential to create confusion or misunderstanding around what particular CPI groups constitute “all groups”. The NFF would prefer the term “All Groups CPI” rather than “All Groups” as this reflects the full terminology used in the index.

⁹ See eg. Wage Rates and Ready Reckoner, circular No. 4 of 1974 (NSW).

Item 116: Schedule G – Definitions and Interpretation – Wine Industry

75. As noted in previous submissions, the definition of “wine industry” in the Pastoral Award Exposure Draft is missing “the planting of wine grape vines.
76. The NFF supports the clause proposed in our correspondence dated 8 July 2016 and subsequently incorporated into the revised Exposure Draft.

Sarah McKinnon
General Manager, Workplace Relations and Legal Affairs

Pastoral Award 2010 Fact Sheet



In early 2011, the Fair Work Ombudsman (FWO) in conjunction with the National Farmers Federation (NFF) commenced a national education campaign on changes to the *Pastoral Award 2010*.

The campaign has been funded by the Australian Government through the Fair Work Ombudsman's Shared Industry Assistance Projects (SIAP) Grant Program, which aims to better inform employers (particularly small to medium businesses) about changes to modern awards applicable to their industry sector. Following a competitive selection process, NFF was one of 15 successful organisations selected to deliver the education campaign in conjunction with the FWO.

Broadacre Farming and Livestock Operations

This fact sheet has been developed to assist employers to implement the Pastoral Award 2010 at their workplace. It should not be seen as a replacement to the Award but rather guidance material to understand the Award.

Transitional Arrangements for Classifications and Wage Rates

The Broadacre Farming and Livestock Operations section of the Pastoral Award 2010 (the Award) covers all work in the industry other than pig breeding and raising, poultry farming and shearing operations (as defined).

While the vast majority of this section of the Award is the same as the old Pastoral Industry Award 1998, the classification and related wage structure has been drawn from a number of state and territory awards (pre-modern awards) as well as the Pastoral Industry Award 1998. The resulting complexity of the classification structure and particularly the transition from pre-modern awards to the new award and the transitional wage rates is causing significant angst amongst farmers.

To assist, Transition Tables for Classifications and Wage Rates (Transition Tables) have been created to translate the pre-modern award arrangements into the new modern award classification and transitional wage rate structure for businesses that operated prior to the commencement of the Award. These Transition Tables are large and therefore they have not been included in this fact sheet but rather can be found at www.nff.org.au or can be made available by contacting the NFF on 02 6273 3855 or the Fair Work Infoline on 13 13 94.

Example: Finding the correct classification and wage rate

Jenny & Justin's feedlot property in South Australia was covered by the Pastoral Industry Award 1998 prior to 1 January 2010. They employed a number of workers under the classification of Station Hand Grade 1 (paid at level 1 rates) and Senior Station Hand (paid at level 3 rates). While the new classifications of the Pastoral Award 2010 refer to Station Hand Grade 1 and Senior Station Hand, the award also contains specific provisions for feedlot employees.

To determine which classification their employees should now be under and the subsequent transitional wages, Jenny and Justin will need to refer to the Transition Table on the website for the Pastoral Industry Award 1998.

Classifications

All modern awards contain a list of 'classifications' which describe the employee's qualifications and the duties they should be able to perform at each level.

The Pastoral Award 2010 has eight classification levels in clause 27 with a number of sub-categories at each level. Those levels then correspond to wage rates on either a weekly basis or an hourly basis in clause 28.

Classifications are important because different pay rates are linked to each classification. Employers should therefore give careful consideration to the lists of duties in each classification level to be certain that each employee has been allocated the correct classification and pay level.

When deciding which classification to apply, the employee's job title is not important. Instead, employers should look at how each classification describes the role undertaken by the employee. This applies regardless of how the employee's role is described at the work place. A modern award classification should be equivalent or comparable to the required duties and skills under an employee's pre existing classification. Employees may not always be

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covered by the modern award classification which provides the closest wage rate to their pre-existing wage rate.

Each classification level contains a general description of the employee and some also contain a list of the 'indicative tasks' the employee is expected to be able to perform at that level.

The general description provides a general picture of the employee at a particular level and may cover such things as for the level of supervision which is required, the level of judgment the employee should be able to exercise and the level of responsibility given for the quality of their own work. It also may include descriptions of training and skill levels which should be reached if the employee is to be classified at that particular level.

The list of indicative tasks provides a number of duties, some or all of which the employee should be competent to undertake. The list is not exhaustive and the employee does not have to be able to perform all of them at the time of entry to that level.

When a new employee is engaged they should be informed (preferably in writing) of the classification level they will be employed under. When the employee moves to a higher classification this should also be confirmed in writing.

The transition from federal awards, Notional Agreements Preserving State Awards (NAPSAs) and state Division 2B Awards into the modern Pastoral Award 2010 means that classifications which employers have used for years have been changed.

The Transition Tables show how each of the pre-modern award classifications have been incorporated into the modern award classifications and the pay rates which apply at each level.

Example: Finding the correct classification and wage rate

Georgia and Michael run a cattle station in Queensland and employ a number of employees referred to as station hands. A number of those station hands have worked in the industry for less than 12 months and specifically work with cattle. Those workers will either fit within the Farm and Livestock Hand Level 1 (FLH1) classification for a cattle farm worker grade A or FLH2 classification if their work fits within the definition of a cattle farm worker grade B. Other station hands may fit within the description of a senior station hand at FLH5 as there is no specific classification for a cattle farm worker at that level or a higher level.

Hours of Work & Overtime

The hours of work provision (clause 30) for farm and livestock hands is very flexible to meet the demands of farm operations.

The award provides that the ordinary hours for farm and livestock hands other than station cooks must not exceed 152 hours over a four week period, by agreement between the employer and the employees.

This provision needs to be read along with the overtime clause (clause 31) which provides that any work in excess of the ordinary hours will be regarded as overtime.

Unlike some of the pre-reform awards which employers were used to using, the Pastoral Award 2010 does not require ordinary hours to be worked within specific times of the day or week nor does it impose penalties for ordinary hours of work on weekends. Ordinary hours can therefore be worked on any day of the week at any time without penalty rates until 152 hours have been worked within a four week period.

Overtime

Overtime applies for all farm and livestock hands other than station cooks after 152 hours of work in a four week period.

Overtime is to be paid at a rate of time and one half except for Sundays. Overtime on Sundays is double time unless in the case of feeding and watering stock where the time and one half overtime rate applies. Milking is not regarded as feeding and watering stock.

An employee can elect to take time off, with pay, for a period equal to the overtime worked. In this case the overtime is paid at the ordinary rate not at time and one half.

Example 1: Using a roster system to schedule employees for 152 hours' work over four weeks

George works on a dairy farm near Mount Gambier in South Australia.

His hours of work for a four week roster period are as follows:

WEEK 1

Monday	day off
Tuesday	day off
Wednesday	10 hours
Thursday	10 hours
Friday	10 hours
Saturday	10 hours
Sunday	10 hours
Total:	50 hours

WEEK 2

Monday	day off
Tuesday	day off
Wednesday	10 hours
Thursday	10 hours
Friday	10 hours
Saturday	10 hours
Sunday	10 hours
Total:	100 hours

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WEEK 3

Monday	day off
Tuesday	day off
Wednesday	10 hours
Thursday	10 hours
Friday	10 hours
Saturday	10 hours
Sunday	10 hours
Total :	150 hours

WEEK 4

Monday	day off
Tuesday	10 hours (Overtime begins after two hours work)
Wednesday	10 hours
Thursday	10 hours
Friday	10 hours
Saturday	day off
Sunday	day off
Total:	190 hours

Based on these hours of work George will be paid at ordinary time rates until he has worked two hours on the Tuesday of the fourth working week. He will then be paid overtime for the 38 hours worked until the end of the four week period. Overtime paid for work on the Tuesday to Friday of the fourth week is time and a half while any work on Sunday would be double time. George's employer has rostered him for a day off on the final Sunday of the four week period therefore avoiding paying the double time for milking on Sunday. George also gets four days off in a row at the end of each cycle.

Example 2: How the 152 hours in a four week period works in practice

Charlie works on a mixed farming enterprise and it is the middle of the grain harvest. His hours of work during that time for a 4-week period are reflected as follows:

WEEK 1

Monday	12 hours
Tuesday	14 hours
Wednesday	10 hours
Thursday	10 hours
Friday	4 hours
Saturday	10 hours
Sunday	12 hours
Total:	72 hours

WEEK 2

Monday	day off
Tuesday	12 hours
Wednesday	10 hours
Thursday	12 hours
Friday	9 hours
Saturday	12 hours
Sunday	day off
Total:	127 hours

WEEK 3

Monday	9 hours
Tuesday	8 hours
Wednesday	9 hours (Overtime begins after eight hours work)
Thursday	7 hours
Friday	10 hours
Saturday	4 hours
Sunday	day off
Total:	174 hours

WEEK 4

Monday	day off
Tuesday	day off
Wednesday	day off
Thursday	9 hours
Friday	10 hours
Saturday	8 hours
Sunday	day off
Total:	201 hours

In this example overtime will begin to apply after the eighth hour on the Wednesday in Week 3 as that is when 152 hours are completed. A total of 201 hours has been worked in the 4-week period so 49 hours will need to be paid as overtime or given as paid time off in lieu of overtime.

Note: The employer will have complied with the award if Charlie is paid as the calculations show. However, employers should also be aware that the National Employment Standards (NES) allow for employees to refuse to work unreasonable additional hours (see below).

Reasonable additional hours

The NES within the Fair Work Act (the Act) underpins all awards and agreements. Section 62 of the Act provides that an employer must not request or require an employee to work more than 38 hours per week plus reasonable additional hours. The employee has a right to refuse to work the additional hours if they are unreasonable.

The Act provides guidance as to how an employer or an employee can decide if the additional hours are reasonable.

When deciding if additional hours of work are reasonable the following must be considered:

- Any risk to the employee health and safety working additional hours;
- The employee's personal circumstances, including family responsibilities;
- The needs of the workplace or enterprise in which the employee is employed;
- Whether the employee is entitled to receive overtime payments, penalty rates and other compensation for, or a level of remuneration that reflects an expectation of working additional hours;

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- e) Any notice given by the employer of any request or requirement to work the additional hours;
- f) Any notice by the employee of his or her intention to refuse to work the additional hours;
- g) The usual patterns of the industry, or the part of an industry, in which the employee works;
- h) The nature of the employee's role and the employee's level of responsibility.

Applying the reasonable additional hours test

Each four week roster must be considered against the reasonable additional hours test.

In **Example 2** above Charlie has worked 34 additional hours in Week 1 of the harvest. While in the example we don't know all of Charlie's circumstances we do know that he was working in a seasonal busy period and the hours of Week 1 reflect the most intense time to get the crop harvested to maximise its yield. We also know that Charlie has been provided with days off later in his 4-week period to give him a break after the long hours during the first two weeks of the 4-week period. Charlie is also eligible for overtime after reaching 152 hours in the period. It is accepted that this would be a critical period for the employer and that it is a usual pattern of work in the industry. As such, in this scenario, the additional hours could be considered reasonable. However, additional information would be required as to whether Charlie had agreed to work the additional hours and whether he was notified when he took the job that long hours of work would be needed during seasonal busy times. Other factors to consider would be whether Charlie had appropriate breaks each day and if safety issues had been considered and risk management procedures put in place to manage safety issues especially fatigue.

Station cooks

The Award provides specific hours of work arrangements for station cooks at clause 30.3.

The overtime payment for station cooks is based on the "with keep" rate.

Breaks

The Award provides for breaks for all employees at clause 15.

A meal break of not less than 30 minutes and not more than one hour will be allowed each day to be taken not more than five hours after beginning work. A paid rest break of 10 minutes is required each morning. An additional unpaid break can also be provided if agreement is reached between the employer and employee.

Although the Award specifies when the breaks should be provided this can be changed by agreement between

an employer and individual employee. The Award also provides for double time rates to be paid if an employee is requested to work during their meal break until a break is provided.

Allowances

There are a range of allowances that apply for certain circumstances at clause 17 of the Award.

The important allowances for the purposes of farm and livestock hands are:

- Travelling allowance at 17.3(e) that provides that if an employee is required to travel from one place to another then the time travelling will be counted as time worked.
- Use of own vehicle allowance at 17.3(f) which provides an allowance of \$0.74km (ppc 01072010) if an employer instructs an employee to use their own vehicle during working hours for work purposes.
- Charges for accommodation, meat, goods and services can be made by agreement in accordance with clause 17.3(i). This provision is an alternative to a 'keep' employee where a deduction in wages can be made in accordance with clause 28.3 if board and lodging is provided.

Leave provisions

The Award in conjunction with the National Employment Standards provides a range of leave provisions including annual leave, personal/carer's leave and compassionate leave, community service leave and public holidays.

It is strongly recommended that employers consider those provisions at clauses 23 to 26 of the award in conjunction with the National Employment Standards.

Further, transitional arrangements may apply to all wages, loadings and penalty rates and provide a different rate to what is prescribed in the Award until 1 July 2014. For further information refer to the Transition Table.

If you would like further information regarding this fact sheet or the *Pastoral Award 2010*, please contact NFF's Fair Work Liaison Officer, Denita Wawn on 02 6273 3855.

Legal Disclaimer

The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws.

The information contained in this publication is:

- general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and
- not legal advice.

Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered.

This information was published on Wednesday 16 March 2011. The FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information.

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/239

Re: s.156 4 yearly review of modern awards

4 yearly review of modern awards – Pastoral Award 2010

STATEMENT OF KEITH RICE

On 25th October 2016, I, Keith Rice of [REDACTED], Launceston in the State of Tasmania, state as follows:

1. I am the Chief Executive of Primary Employers Tasmania and Poppy Growers Tasmania, and have been for 30 years.
2. I have over forty years' experience in industrial relations and in my current role, as in previous roles, I provide advice to employers on the Pastoral Award 2010 and its predecessor awards.
3. Hours of work flexibility is essential in the pastoral industry. Most of the work occurs outside, in an uncontrolled environment, affected by many factors including the weather, the needs of crops and livestock.
4. Sometimes long hours are part of the industry and are unavoidable. At other times, employees can take time off as it suits them. It is well understood in the industry that hours will vary and that flexibility works both ways.
5. It is common practice for hours of work in the pastoral industry to be averaged over a four week period in line with the Pastoral Award. This is a longstanding arrangement that means that farmers can manage their budgets and also give their employees some certainty of income.
6. The hours of work in the Pastoral Award 2010 reflect this longstanding arrangement, and continue to provide for the averaging of hours of work. Peaks and troughs in farm work are managed by allowing up to 152 ordinary hours to be worked on any day of the week, over a four week period, before any overtime is payable.
7. The exception is for piggeries, where hours of work are more prescriptive. To a degree, this reflects the history of award coverage of the pork industry under "Pig Breeding and Raising" Awards both federally and in New South Wales (NSW) and Queensland (see **Attachment A**). While there was the ability to work 152 hours over a four week period in the federal and Queensland awards, the NSW Award limited hours of work to 38 hours of work, Monday to Friday, between 6.00am and 6.00pm.
8. Very few piggeries in Tasmania were covered by the Pig Breeding and Raising (AWU) Award prior to 2010 with the vast majority being subject to the Pastoral Industry Award 1998, as it is not common for piggeries to be the sole enterprise of a farm business.

... [REDACTED]

Keith Rice

25th October 2016

Date

History of Hours of Work in the Pork Industry

AWARD	PROVISION
Pig Breeding and Raising (AWU) Award 1999	<p>Clause 12 – Hours of work</p> <p>12.1 Ordinary hours shall not exceed 152 in any month. If an employee works less than 38 hours in one week of any month then the employer shall use its best endeavours to ensure that the employee is paid for 38 hours work during any such week. Unless otherwise agreed by an employer and an affected employee the spread of ordinary hours shall be eight per day between 6.00 a.m. to 6.00 p.m. Monday to Friday. No employee shall be required to work more than twelve ordinary hours per day.</p>
Pig Breeding and Raising Award - State 2003 (Qld)	<p>Clause 6 – Hours of work</p> <p>(a) Subject to clause 6.1.2 (Working of a 38 hour week) and subject to the exceptions hereinafter provided, the ordinary hours of work shall be an average of 38 per week, to be worked on one of the following bases:</p> <p>(i) 38 hours within a work cycle not exceeding 7 consecutive days; or (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or (iv) 152 hours within a work cycle not exceeding 28 consecutive days....</p> <p>(c) The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks and rest pauses, between 5.00 a.m. and 8.00 p.m. Monday to Sunday inclusive. The spread of hours prescribed herein may be altered as to all or a section of employees provided there is agreement between the employer and the majority of employees concerned:</p>
Breeding and Raising Pigs & C. Employees (State) Award - (NSW)	<p>Clause 4 – Hours of Work</p> <p>(i) (a) Subject to the provisions of paragraph (b) of this subclause, the ordinary hours of work shall not, without the payment of overtime, exceed 38 hours per week, and shall be worked continuously, except for meal breaks, for eight hours per day, five days per week, Monday to Friday inclusive, between the hours of 6:00am and 6:00pm.</p> <p>(b) Where genuine agreement exists between the employer and the employee, the following may apply:</p> <p>The ordinary hours of work shall not, without the payment of overtime, exceed 38 hours per week, and shall be worked continuously, except for meal breaks, Monday to Friday inclusive, between the hours of 6:00am and 6:00pm.</p>