

**SUBMISSIONS IN REPLY BY THE VOICE OF HORTICULTURE ON CHANGES PROPOSED BY THE
EXPOSURE DRAFT - AM2014/231 - HORTICULTURE AWARD 2010 [MA000028]**

GENERAL

The Voice of Horticulture (previously the Horticulture Taskforce) in its submission dated 3 February 2014 to the Issues Paper prepared by the Fair Work Commission, dated 24 January 2014 said:

*"It is the Taskforce's submission that, as a result of the previous modern awards reviews, the modern awards, and in particular the Horticulture Award 2010 (**Horticulture Award**), meet the requirements of a modern award and, in particular, the modern awards objective¹. Thus the Commission does not need to make further amendments or otherwise vary or alter modern awards, in particular the Horticulture Award. The Taskforce submits the 4 year modern awards review "militates against the adoption of broad changes to modern awards"² involving "a fresh assessment of modern awards unencumbered by previous Tribunal authority"³."*

The Voice of Horticulture maintains this position and responds to the submissions made in respect of the Exposure Draft as set out below.

REPLY TO SUBMISSIONS OF AWU

Proposed amendments to clauses 6.4 and 6.5(c)(i)

These matters are currently being dealt with in the casual and part time proceedings and it is premature for the AWU to propose changes in its submissions on the exposure draft. Nevertheless, the Voice of Horticulture submits:

- The Exposure Draft reflects the nature of part time work in the industry and having regard to the nature of the industry, no further limitations should be imposed. If this was an issue for the AWU it should have referred the matter to the casual and part time Full Bench.
- There is currently no entitlement to overtime rates for casual workers. This is made clear in clause 22.1 of the Horticulture Award 2010 (the **Current Award**) which limits overtime to part time and full time employees. This matter is being dealt with in the casual and part time Full Bench.

Proposed amendment to clause 8.1(a)(iii)

The Voice of Horticulture objects to this amendment. The obligation is clear and reflects what appears in the Current Award. It has not given rise to any issues.

¹ section 134 *Fair Work Act 2009 (Cth)* (**FW Act**).

² *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* Item 6, Sch. 5—*Modern awards review* [2012] FWAFFB 5600 at [88].

³ *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* Item 6, Sch. 5—*Modern awards review* [2012] FWAFFB 5600 at [99].

Proposed amendment to clause 8.1(a)(iv)

The Voice of Horticulture objects to this amendment. The Voice of Horticulture supports the AIG amendment as it reflects what is in the Current Award.

Proposed amendment to clause 9.1(c)

The Voice of Horticulture agrees that a change from "appropriate minimum wage" to "ordinary hourly rate" should not occur but that the change should be to "minimum hourly rate for the reasons set out in [327] and [328] of the AIG submissions.

Proposed amendment to clause 10.2

The VOH objects to this proposal, repeats its previous submission and supports the submission of the NFF.

Proposed amendment to clause 16.8

There is no direct contravention of section 90 of the Fair Work Act 2009 (Cth). Nevertheless, it is dealt with in the NOTE to clause 16.5 and does not need to be replicated.

REPLY TO SUBMISSIONS OF NFF

The Voice of Horticulture supports the following matters raised in the NFF submissions:

- moving all definition to Schedule G to avoid confusion;
- the amendments to:
 - clause 1.2 (which is also recorded by the AIG);
 - clause 2.1;
 - clauses 3.5 and 3.6
- the insertion of:
 - clause 2.3;
 - clause 15.2()(i) - *Time off in lieu of overtime* in the table appearing in clause 5.2; and
- to the extent that clause 15.1 seeks to extend overtime to employees other than full time or part time employees, the clause should be amended or alternatively limited to full time and part time employees as currently provided. The duplication with clauses 8.1(a)(iv) and 14.1(h) also needs to be addressed. See also submissions of AIG at [332] and [333].

Reply submissions to AIG

The Voice of Horticulture supports the following matters raised in the AIG submissions:

- the amendments to:

- clause 6.4(b);
- clause 6.5(c)(i);
- clause 9.1(c);
- Schedule B.2.3;
- *ordinary hourly rate* in Schedule G;
- the insertion of 8.1(a) - *Ordinary hours of work - days of work* in the table appearing in clause 5.2; and
- the proposed deletion to clause 8.1(a)(iv) and 1.4(h).

Dated: 5 May 2016

National Workplace Lawyers
for and on behalf of the Voice of Horticulture