

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

2 February 2018

Re: AM2014/239 Pastoral Award 2010

BACKGROUND

1. The President, Justice Ross, issued a Statement and Directions on 20 December 2017 that included directions for interested parties to file brief written submissions in relation to any provisional view of the Full Bench of the Fair Work Commission ('**Full Bench**') that has been incorporated into the Exposure Draft for the *Pastoral Award 2010* ('**Exposure Draft**').
2. The Australian Workers' Union ('**AWU**') makes the following submissions in accordance with those directions. All references to clauses are clauses of the revised Exposure Draft published 2 November 2017.

DRAFTING AND TECHNICAL ISSUES

Provision of a saddle – 10.2(a) & 25.1

3. The provisional view of the Full Bench regarding what is payable to an employee who provides his or her own saddle is as follows:

"...where a station hand is required by the employer to supply their own saddle, and the employee does not own a saddle and must purchase one, then the employee is to be reimbursed for the cost of purchasing the saddle under clause [17.2(a)(i)]. But in such circumstances the employee is not also entitled to receive the allowance specified in clause 29.1."

4. The AWU confirms that we no longer pursue the claim that the saddle allowance will be paid in addition to the reimbursement to the employee for the cost of buying a saddle, and consequently we agree in principle with the Full Bench's provisional view above.
5. However, The AWU has some concerns regarding how this provisional view has been incorporated into the Exposure Draft. We set out each concern below.
6. Our primary concern is that clause 25.1 of the Exposure Draft has been amended to remove completely the weekly allowance for the provision of a saddle, thereby removing any employee's entitlement to that allowance. We assume that this is a consequence of the Full Bench's provisional view. The AWU respectfully submits that such an amendment is misconceived for a number of reasons, which we address below.
7. Firstly, the provisional view of the Full Bench specifically relates to employees who *do not* own a *saddle* but has no regard to those employees who *do*. We understand the allowance at clause 25.1 to apply both to employees that do not own a saddle and those that do, as the allowance is payable for the use of a saddle located by the employee as opposed to a saddle that is provided by the employer.
8. The amendment of clause 25.1 effectively results in the removal of a monetary entitlement from the *Pastoral Award 2010* ('**Pastoral Award**') for those employees who provide their own saddle regardless of if they own one at the time of their employment or not. This removal is an unjustified substantive change and will result in employees being deprived of an allowance that they are currently and rightfully entitled to.
9. Secondly, the removal of the saddle allowance at clause 25.1 is ostensibly based on the Full Bench's interpretation of clause 10.2(a)(i). However, no amendment to clause 10.2(a)(i) has been proposed to clarify this interpretation. As is clear from the National Farmers' Federation ('**NFF**') submission dated 20 November 2017, the interpretation of clause 10.2(a)(i) preferred by the Full Bench in its provisional view is not one that is shared by all parties, and therefore there is clearly other possible interpretations of clause 10.2(a)(i) based on the plain meaning of the words in clause 10.2(a) as a whole.

10. Finally, it is our understanding that in general terms, the provision of a horse and saddle by an employee are usually bundled together, in that if the employer requires the employee to provide his or her own saddle, more often than not the provision of a horse will also be required and vice versa. By removing the entitlement to an allowance specifically for the provision of a saddle, the single allowance for a horse in the amended clause 25.1 is open to the interpretation that the allowance of \$7.26 is an allowance for a horse *and* saddle. Such an interpretation again results in a reduction in conditions for such an employee and is therefore a substantive change.

11. The AWU is concerned that the amendments made to the Exposure Draft to give effect to the Full Bench's provisional view regarding the provision of a saddle rely on what is currently a contentious interpretation of a general clause in order to remove an explicit entitlement to an allowance in a specific clause. The AWU contends that this approach has strong potential to create an outcome where an employee covered by the Pastoral Award who provides a saddle as part of his or her employment will receive no additional recompense at all for such a provision.

12. In accordance with the above, The AWU proposes that the amendments to clause 25.1 that are currently proposed as a consequence of the Full Bench's provisional view be abandoned and the clause returns to specifying both a horse and saddle allowance.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'ZD', with a long horizontal flourish extending to the right.

Zachary Duncalfe
NATIONAL LEGAL OFFICER
The Australian Workers' Union