

## **FAIR WORK COMMISSION**

**Matter No. 2016/25**

### **FOUR YEARLY REVIEW OF MODERN AWARDS**

#### **HORTICULTURE AWARD 2010**

#### **OUTLINE OF CLOSING SUBMISSIONS OF THE NUW**

1. This outline of closing submissions is filed on behalf of the National Union of Workers (NUW) in accordance with the directions issued by the Full Bench on 4 July 2017 and amended on 27 July 2017.
2. This outline is to be supplemented orally at the hearing on 4 August 2017. It is intended that this outline replaces and supersedes the NUW's outline dated 21 April 2017.
3. The NUW submits that the employer parties have failed to make out their case for the proposed variation. The employer parties have failed to run an evidentiary case that adequately supports the proposed variation. Accordingly, the applications for the proposed variation should be dismissed.
4. The status quo is that employees who perform work at "off-farm" packing and processing facilities are covered by the *Storage Services and Wholesale Award 2010 (SSW Award)* and are not covered by the *Horticulture Award (the relevant workers)*.
5. The proposed variation seeks to vary the coverage of the Horticulture Award so that it would cover the relevant workers. This is a significant change as the *Horticulture Award* has vastly inferior wages and conditions to the *SSW Award* and the proposed variation would reduce the coverage of the *SSW Award*.

6. The NUW relies on the following witness statements:
- (a) The witness statement of George Robertson dated 21 April 2017 (**the first Robertson statement**);<sup>1</sup>
  - (b) The witness statement of George Robertson dated 30 June 2017 (**the second Robertson statement**);<sup>2</sup>
  - (c) The witness statement of Kay Rault dated 21 April 2017 (**the first Rault statement**);<sup>3</sup>
  - (d) The witness statement of Kay Rault dated 30 June 2017 (**the second Rault statement**);<sup>4</sup>
  - (e) The witness statement of Mark Johnston dated 21 April 2017 (**the Johnston statement**);<sup>5</sup> and
  - (f) The witness statement of Jafar Kazmi dated 30 June 2017 (**the Kazmi statement**).<sup>6</sup>
7. These submissions are structured in the following way:
- (a) In Part A of these submissions, the NUW makes submissions as to why the application made pursuant to s.156 of the *Fair Work Act 2009* (Cth) (**FW Act**) (**the four yearly review application**) should be dismissed.

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<sup>1</sup> Exhibit NUW 3.

<sup>2</sup> Exhibit NUW 4.

<sup>3</sup> Exhibit NUW 1.

<sup>4</sup> Exhibit NUW 2.

<sup>5</sup> Exhibit NUW 5.

<sup>6</sup> Exhibit NUW 6.

- (b) In Part B of these submissions, the NUW makes submissions as to why the application made pursuant to s.160 of the FW Act (**the ambiguity, uncertainty or error application**) should be dismissed.

## **PART A: THE FOUR YEARLY REVIEW APPLICATION**

### **The legislative scheme and applicable principles**

8. Section 156 of the FW Act provides that the Commission must conduct a review of the modern awards after each four years of operation.
9. The Commission’s task in conducting a four yearly review is relevantly constrained. The task is to review the modern award against the modern awards objective to ensure that the modern award, in conjunction with the National Employment Standards (**NES**), “*provide a fair and relevant minimum safety net of terms and conditions*” (section 134 of the FW Act).
10. Pursuant to section 134(1) of the FW Act the Commission is required to take into account the following which are defined as “the modern awards objective”:
- “(a) *relative living standards and the needs of the low paid; and*
  - (b) *the need to encourage collective bargaining; and*
  - (c) *the need to promote social inclusion through increased workforce participation; and*
  - (d) *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
  - (da) *the need to provide additional remuneration for:*
    - (i) *employees working overtime; or*
    - (ii) *employees working unsocial, irregular or unpredictable hours; or*
    - (iii) *employees working on weekends or public holidays; or*
    - (iv) *employees working shifts; and*

- (e) *the principle of equal remuneration for work of equal or comparable value; and*
- (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
- (g) *the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
- (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.”*

11. In *National Retail Association v Fair Work Commission* (2014) 225 FCR 154 at [109], the Federal Court explained that the above are “*broad considerations which the Commission must take into account when considering whether a modern award meets the objective set by s 134(1).*”
12. The Commission has accepted that no particular weight should be attached to any one consideration over another and to the extent that in a particular matter there is tension between some of the considerations in section 134(1) of the FW Act “*the Commission’s task is to balance the various considerations and ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions*” (*Four Yearly Review of Modern Awards – Annual Leave* [2015] FWCF 3406 at [19] and [20]).
13. Relevantly, s.138 of the FW Act provides:

“A modern award may include terms that it is permitted to include, and must included terms that it is required to include, ***only to the extent necessary to achieve the modern awards objective*** and (to the extent applicable) the minimum wages objective.” (emphasis added).

14. In *Four Yearly Review of Modern Awards – Penalty Rates* [2017] FWCFB 1001 (*The Penalty Rates Decision*) the Full Bench observed at [141]:

“... the Commission’s task in the Review is to make a finding as to whether a particular modern award achieves the modern awards objective. If a modern award is not achieving the modern awards objective then it is to be varied such that it only includes terms that are ‘necessary to achieve the modern awards objective’ (s.138). In such circumstances regard may be had to the terms of any proposed variation, but the focal point of the Commission’s consideration is upon the terms of the modern award, as varied. The approach outlined is supported by the terms of s.138 itself, the legislative context and the judgement of the Full Court of the Federal Court in *National Retail Association v Fair Work Commission*.”

15. It has been found that when considering whether the requirement is met the Commission is required to form a “value judgement” which is based on the prescribed considerations in s 134(1) with regard to the submissions and evidence provided by the parties on the prescribed considerations (see *Four Yearly Review of Modern Awards* [2014] FWCFB 1788 at [36]) (*the Preliminary Jurisdictional Decision*).
16. In the *Preliminary Jurisdictional Decision* the Full Bench explained that when conducting the review the Commission is not conducting this process divorced from the context of the creation of the modern award and will proceed on the basis that “prima facie” the modern award met the modern awards objective when it was made in 2010. Relevantly, the Full Bench stated:

“In conducting the Review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Part 10A of the *Workplace Relations Act* 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see Item 4 of Schedule 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective. The considerations specified in the legislative test applied by the AIRC in the Part 10A process is, in a number of important respects, identical or similar to the modern awards objective in s.134 of the FW Act. In the Review the

Commission will proceed on the basis that *prima facie* the modern award being reviewed achieved the modern awards objective at the time that it was made.”  
(emphasis added)

17. In the *Preliminary Jurisdictional Decision* the Full Bench has provided guidance as to how this review should be conducted. Significantly at [23] the Full Bench stated:

“The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a 'stable' modern award system (s.134(1)(g)). The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI's submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.” (emphasis added)

18. In the *Penalty Rates Case* the Full Bench affirmed the *Preliminary Jurisdictional Decision* and at [269] summarised the Commission's task in the review as follows:

1. *The Commission's task in the Review is to determine whether a particular modern award achieves the modern awards objective. If a modern award is not achieving the modern awards objective then it is to be varied such that it only includes terms that are 'necessary to achieve the modern awards objective' (s.138). In such circumstances regard may be had to the terms of any proposed variation, but the focal point of the Commission's consideration is upon the terms of the modern award, as varied.*
2. *Variations to modern awards must be justified on their merits. The extent of the merit argument required will depend on the circumstances. Some proposed changes are obvious as a matter of industrial merit and in such circumstances it is unnecessary to advance probative evidence in support of the proposed variation. Significant changes where merit is reasonably contestable should for the same reasons we reject the 'economic unsustainability test' advanced by the ACTU. There is no proper legislative basis for such a test and to adopt it would be an unwarranted fetter on the discretion conferred by s.156(2)(b)(i) be supported by an analysis of the relevant legislative provisions and, where feasible, 154 probative evidence.*
3. *In conducting the Review it is appropriate that the Commission take into account previous decisions relevant to any contested issue. For example, the Commission will proceed on the basis that *prima facie* the modern award*

*being reviewed achieved the modern awards objective at the time it was made. The particular context in which those decisions were made will also need to be considered.*

4. *The particular context may be a cogent reason for not following a previous Full Bench decision, for example:*
- *the legislative context which pertained at that time may be materially different from the FW Act;*
  - *the extent to which the relevant issue was contested and, in particular, the extent of the evidence and submissions put in the previous proceeding will bear on the weight to be accorded to the previous decision; or*
  - *the extent of the previous Full Bench’s consideration of the contested issue. The absence of detailed reasons in a previous decision may be a factor in considering the weight to be accorded to the decision.*

19. The proposed variation is a “significant change”. This would seem to be an uncontroversial proposition.

20. Thus, it is incumbent on the employer parties to justify the proposed significant change with a cogent merit argument supported by probative evidence. The employer parties carry the onus of satisfying the Commission that the modern awards objective is no longer being met. As explained below the employer parties have failed to discharge this onus.

### ***The rule about varying coverage***

21. The special rule about reducing coverage in section 163(1) of the FW Act is applicable and key to the Commission’s consideration of whether to vary the award pursuant to the four yearly review application.

22. Section 163(1) provides:

“The FWC must not make a determination varying a modern award so that certain employer or employees stop being covered by the award **unless the FWC is satisfied that they will instead become covered by another modern**

award (other than the miscellaneous modern award) **that is appropriate for them** (emphasis added)

23. The *Explanatory Memorandum to the Fair Work Bill 2008* explains that the legislative intent behind section 163(1) is to ensure that when workers cease to be covered by one award and commence being covered by another that the new award provides an adequate safety net.

24. Paragraph 623 relevant provides:

“Subclause 163(1) provides that FWA must not vary a modern award to restrict coverage unless it is satisfied that the relevant employers or employees will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate to them. This requirement, together with the modern awards objective, is designed to ensure that when considering a change in award coverage, FWA considers **whether the content of the new award is an appropriate safety net for the employers and employees that would become covered by it.**” (emphasis added)

25. Accordingly, in the present matter it is incumbent on the employer parties to satisfy the Commission that altering the coverage of the *Horticulture Award* and the *SSW Award* will result in the relevant workers being covered by an award that is *appropriate* for them.

**Should the Commission vary the Award pursuant to the four yearly review application?**

26. The NUW does not press any submissions in relation to s.156(3).



***Is the rule about reducing coverage satisfied?***

27. The NUW submits that the special rule in section 163(1) about reducing award coverage is not satisfied and accordingly the four yearly review application should be dismissed.
28. This rule significantly qualifies the Commission's power when coverage is being varied and is of central importance to the jurisdiction invoked.
29. The employer parties' failure to address this rule is a fundamental deficiency in the four yearly review application.
30. On the basis of the submissions and witness statements relied on by the employer parties (which are directed at matters other than section 163(1)) the Commission cannot be satisfied that the *Horticulture Award* would provide an appropriate safety net for the relevant workers. The Four yearly review application should be dismissed for this reason alone.
31. In light of the submissions made below if the four yearly review application was granted this would result in a significant diminution of the award safety net for the relevant workers. Thus, the *Horticulture Award* would not provide an "appropriate" safety net within the meaning of s.163(1).
32. Further to the above in support of the submission that the *Horticulture Award* would not provide an appropriate safety net for the relevant workers the NUW relies on the following matters.
33. In *Award Modernisation* [2009] AIRCFB 345 (the decision that, inter alia, created the *Horticulture Award*) the six member Full Bench presided over by Justice Giudice specifically considered how far the coverage of the *Horticulture Award* should extend

and expressly ruled that it should be confined within the “farm gate”. The Full Bench relevantly found at [53]:

“Our overall approach to coverage of the pastoral and horticultural awards is that they should be confined to agricultural production within the “farm gate.”

34. It is apparent that given the terms of clause 4 of the *Horticulture Award* the Full Bench’s reference to the “farm gate” is a reference to a physical location where work is performed, and not a reference to a theoretical concept that is intended to capture the agricultural supply chain as seems to be contended by the Ai Group.
35. In *Mitolo Group Pty Ltd v National Union of Workers* [2015] FWCFB 2524 at [46] the Full Bench accepted that when the *Horticulture Award* was being made “work location was intended to be a critical element in the coverage of the *Horticulture Award*...”.
36. As established in the *Preliminary Jurisdictional Decision* at [27], and affirmed in the *Penalty Rates Decision* at [254], the Full Bench when conducting a four yearly review is required to follow previous Full Bench decisions unless there are cogent reasons for not doing so.
37. On the case that has been presented by the employer parties there is simply no cogent basis for the Full Bench to not follow the above rulings.
38. Consistent with the above Full Bench decisions the present Full Bench should not be satisfied that the *Horticulture Award* is an appropriate award for the relevant workers who perform their work outside of the “farm gate”.
39. In summary, the four yearly review application should be dismissed because the Commission should not reach the requisite state of satisfaction in relation to s.163(1).

***The considerations in section 134(1)***

40. The NUW makes the submissions set out below in relation to the considerations in section 134(1).

Section 134(1)(a) - relative living standards and the needs of the low paid

41. This consideration supports rejecting the proposed variation. It is submitted that if the proposed variation was granted this would result in a significant diminution of the award safety net and thus the living standards of the low paid.
42. In the Mitolo Group’s opening, Senior Counsel for the Mitolo Group attempted to downplay the significant disparity between the wages payable under the two awards. It was submitted that under the *Horticulture Award* the base rates are “*slightly less*” and that “*the penalty regime is not as generous.*”<sup>7</sup> The Commission should reject this characterisation of the differences between the awards. The Commission should conclude that the wages and conditions provided for in the *SSW Award* are vastly superior to the wages and conditions provided for in the *Horticulture Award*.
43. Attached to this outline and marked “**Schedule 1**” is document prepared by the NUW which illustrates the disparity between the wages that are payable under the *Horticulture Award* and the *SSW Award*.
44. Schedule 1 establishes that the *Horticulture Award* is inferior in the following key respects:
- (a) ordinary hourly rates (across all classifications);

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<sup>7</sup> PN112.

- (b) early morning shift loadings;
- (c) afternoon shift loadings;
- (d) night shift loadings;
- (e) overtime rates; and
- (f) public holiday rates.

45. Further to the above it must be noted that the *Horticulture Award* also provides employers with the option of negotiating “piecework agreements” which can significantly reduce the wages received by workers.

46. Furthermore, the NUW relies on the First Robertson Statement at paragraphs [9] to [19] which also addresses the disparity between the wages that are payable under the *Horticulture Award* and the *SSW Award*.

47. It is plain that if the proposed variations are granted the relevant workers will face significant detriment and hardship as the living standards of these workers will be drastically reduced.

48. It is submitted that given the impact that the variation will have on employees for the employer parties to succeed they will need to establish a compelling case in favour of the proposed variation. They have failed in this regard.

Section 134(1)(b) – the need to encourage collective bargaining

49. This consideration militates in favour of rejecting the proposed variation.

50. Mr Robertson gave evidence about the impact that the variation being granted would have on off-farm packing facilities covered by enterprise agreements which are based on the safety net in the *SSW Award*.<sup>8</sup> Other such agreements include the *Select Harvests Food Products Pty Ltd, Enterprise Agreement 2015*, the *Costa Logistics Eastern Creek Distribution Centre Enterprise Agreement 2016*, and the *Geoffrey Thompson & Growers Co-Operative Company & National Union of Workers Enterprise Agreement 2013*. . In light of this evidence the Commission should find that the proposed variation would be likely to stifle enterprise bargaining in such enterprises.

Section 134(c) – the need to promote social inclusion through increased workplace participation

51. This is a neutral consideration.

Section 134(d) – the need to promote flexible modern work practices and the efficient and productive performance of work

52. The NUW submits that the employer parties have failed to establish that this factor supports granting the proposed variation.
53. To the extent that the Commission is satisfied that this factor is engaged this must be balanced against the significant detriment that will be caused to workers.
54. The NUW will make oral submissions in response to any submissions advanced by the employer parties in relation to 134(d).

Section 134(da) – the need to provide additional remuneration for prescribed matters

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<sup>8</sup> See first Robertson statement at [18].

55. This factor militates in favour of rejecting the proposed variation as the proposed variation would result in vastly inferior penalty rates as detailed in Schedule 1.

Section 134(e) – equal remuneration

56. This is a neutral consideration.

Section 134(f) – impact on business, including on employment costs and the regulatory business

57. The NUW submits that the employer parties have failed to establish that this factor supports granting the proposed variation.
58. The evidence establishes that many employers choose to have their packing and storage work performed “off-site” due to the significant benefits arising from this.
59. To the extent that the Commission is satisfied that this factor is engaged this must be balanced against the significant detriment that will be caused to workers.
60. The NUW will make oral submissions in response to any submissions advanced by the employer parties in relation to 134(f).

Section 134(g) – simple and easy to understand modern award system

61. This factor supports rejecting the proposed variation.
62. The existing coverage clauses of the *Horticulture Award* (clause 4) is simple and easy to understand. The clause relevantly provides that “*picking, packing, storing, grading, forwarding or treating of horticultural crops*” are covered by the Award if the work is

conducted “*upon farms, orchards and/or plantations*”. In the orthodox manner the clause sets out coverage with reference to the work performed and location.

63. The proposed variation would be inconsistent with a simple and easy to understand modern award system. The employer parties proposed variation would insert into the *Horticulture Award* a coverage clause that is complex, difficult to understand and uncertain. It should be rejected for the following reasons.
64. Firstly, the employer parties seek to insert a definition of “*horticultural enterprise*” as meaning “*an enterprise which as an important part of its enterprise engages in the raising of horticultural crops*”. This definition is entirely uncertain and ambiguous. How is one to determine whether the raising of horticultural crops is an “important part” of an enterprise? The proposed variation should be rejected for this reason.
65. Secondly, the employer parties seek to insert a definition of “enterprise” which encompasses “*an employer engaged with others in a joint venture or common enterprise*” or “*employers that are related bodies corporate within the meaning of section 50 of the Corporations Act 2001 (Cth) or associated entities within the meaning of section 50AAA of the Corporations Act 2001 (Cth).*”
66. This definition is also entirely uncertain and ambiguous. If this definition was included employees would need to conduct a complex investigation to attempt to determine which award covers them. For example, they may need to pay for a company search to find out whether their employer has related entities. It is apparent that employees would not have access to all the necessary information and as such could not always determine which award covers them. For example, under the proposed definition an employer could be a related body corporate because of that entity or another entity exercising “control” or

having a “qualifying investment”. An employer may become a related body corporate or associated entity of a horticultural enterprise as a result of business transactions or conduct that employees would ordinarily have no awareness of. Further, an employee would not be privy to information which would indicate whether his/her employer was engaged in a joint venture.

67. Thirdly, under the draft determination the *Horticulture Award* will apply where the work described in clause 4.2(a) of the draft determination is performed “in connection with” a “horticultural enterprise”. It is not clear what “in connection with” is intended to capture. For example does it extend to work performed under a contract directly with a horticultural enterprise?; or to work performed in relation to produce purchased from a horticultural enterprise?
68. In summary, the proposed variation should be rejected. The proposed variations will lead to the *Horticulture Award* having uncertain and ambiguous coverage. If the proposed variation was granted employers, employees, unions and the Fair Work Ombudsman would not be able to objectively consider the minimum conditions applicable at a particular work location.

Section 134(h) – impact on employment growth, inflation etc...

69. The NUW submits that the employer parties have failed to establish that this factor supports granting the proposed variation.
70. To the extent that the Commission is satisfied that this factor is engaged this must be balanced against the significant detriment that will be caused to workers.



71. The NUW will make oral submissions in response to any submissions advanced by the employer parties in relation to 134(h).

***Summary on the considerations in section 134(1)***

72. The NUW submits that the Commission should conclude that the *SSW Award* provides a fair and relevant minimum safety net of conditions. Accordingly, the modern awards objective is currently met. In the circumstances of this matter given the significant diminution of the award safety net and thus living standards the balancing of the considerations compels the conclusion that the proposed variation should be rejected.
73. The NUW submits that the classification structure in the *SSW Award* is fair and relevant classification for the relevant workers. **Schedule 2** to this outline sets out the NUW's submissions as to the manner in which the work performed in Mitolo's Angle Vale Road facility falls within the classification structure in the *SSW Award*. The skills/responsibilities in the first column are as set out in the table attached to the witness statement of Ms Colqhoun dated 15 June 2017 at pages 55 to 59.
74. In the Penalty Rates Decision, when considering the modern awards objective the Full Bench at [119] endorsed the following observation made by the Full Bench in the *Equal Remuneration Decision 2015* (2015) FWCFB 8200 at [272]:

*“We consider, in the context of modern awards establishing minimum rates for various classifications differentiated by occupation, trade, calling, skill and/or experience, that a necessary element of the statutory requirement for ‘fair minimum wages’ is that the level of those wages bears a proper relationship to the value of the work performed by the workers in question.”*(emphasis added)

75. On the evidence before the Commission it is uncontested that since the modern awards were created there has been no change in the nature of the work performed by the relevant workers, their level of skill and responsibility nor the conditions under which they perform the work (see the first Robertson statement at [19], the first Rault statement at [19] and the Johnston statement at [24]). In light of this evidence, there is no basis for the Commission to conclude that the value of the work performed by the relevant workers has changed.
76. It is submitted that if the level of wages received by the relevant workers is reduced it will not bear a proper relationship to the value of the work they are performing and as such would not provide a fair and relevant safety net.
77. The employer parties have failed to put forward a cogent merit argument which is based on probative evidence that would even come close to justifying the significant changes proposed. Accordingly, the proposed variation should be rejected.
78. It should also be noted that the employer parties seek a variation that would impact the entire horticulture industry but the evidentiary case run by the employer parties focused primarily on the packing and processing facility owned by the Mitolo Group and located at Angle Vale Road in Virginia.
79. The evidence before the Commission in relation to the Mitolo Group's Eastern Creek, New South Wales facility (see the Second Supplementary Statement of Paula Colquhoun<sup>9</sup> and the Kazmi Statement) indicates that there are significant differences between this facility and the facility in Virginia. Thus, there is even insufficient evidence to justify the significant change in relation to off-farm packing and processing facilities

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<sup>9</sup> EX-7.

which pack potatoes as on the evidence before the Commission these facilities vary in significant respects.

80. This issue is even more stark in relation to off-farm packing and processing facilities which pack different types of produce. Notwithstanding the significant changes proposed, the employer parties adduced very little evidence in relation to off-farm packing and processing facilities dealing with produce other than potatoes and carrots.
81. Under cross-examination Mr Turnbull explained to the Commission that apples and pears are commonly stored in packing facility for up to 12 months and that it was normal for this produce to be stored for up to 12 months.<sup>10</sup> Mr Turnbull's evidence clearly establishes that apples and pears, unlike potatoes and carrots, are stored for extended periods of time. Under cross-examination Mr Cody accepted that the level of handling and cleaning required of produce depends on the type of produce, and that potatoes were at one extreme given that they come out of the dirt.<sup>11</sup>
82. In light of the evidence of Mr Turnbull and Mr Cody the Commission should be cautious in how it treats the evidence adduced in relation to the packing of potatoes and carrots. The evidence adduced by the employer parties in relation to the packing of potatoes and carrots is not of any assistance in assessing the proposed variation in relation to the balance of the industry.
83. On any view the Commission has not been provided with sufficient evidence to support the proposed variation in relation to off-farm packing and processing facilities dealing with produce other than potatoes and carrots.

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<sup>10</sup> PN1396-PN1402

<sup>11</sup> PN1036-PN1041.

84. In summary, the four yearly review application should be dismissed.

## **PART B: THE AMBIGUITY UNCERTAINTY OR ERROR APPLICATION**

### **The legislative scheme and applicable principles**

85. Section 160 relevantly provides:

“The FWC may make a determination varying a modern award to remove an ambiguity or uncertainty or to correct an error”

86. In *Re Tenix Defence Pty Limited* [2012] FWAFB 3210 it was observed that:

“[28] Before the Commission exercises its discretion to vary an agreement pursuant to s.170MD(6)(a) **it must first identify an ambiguity or uncertainty. It may then exercise the discretion to remove that ambiguity or uncertainty by varying the agreement.**”

[29] The first part of the process – identifying an ambiguity or uncertainty – involves an objective assessment of the words used in the provision under examination. The words used are construed having regard to their context, including where appropriate the relevant parts of a related awards. As Munro J observed in *Re Linfox – CFMEU (CSR Timber) Enterprise Agreement 1997*:

“The identification of whether or not a provision in an instrument can be said to contain an ‘ambiguity’ requires a judgment to be made of whether, on its proper construction, the wording of the relevant provision is susceptible to more than one meaning. Essentially the task requires that the words used in the provision be construed in their context, including where appropriate the relevant parts of the ‘parent’ award with which a complimentary provision is to be read.”

[30] We agree that context is important. Section 170MD(6)(a) is not confined to the identification of a word or words of a clause which give rise to an ambiguity or uncertainty. A combination of clauses may have that effect.

[31] The Commission will generally err on the side of finding an ambiguity or uncertainty where there are rival contentions advanced and an arguable case is made out for more than one contention.

[32] **Once an ambiguity or uncertainty has been identified it is a matter of discretion as to whether or not the agreement should be varied to remove the ambiguity or uncertainty.** In exercising such a discretion the Commission is to have regard to the mutual intention of the parties at the time the agreement was made.” (emphasis added)

87. It is submitted that the above principles are applicable to section 160.
88. In *Re: Timber & Allied Industrial Award 1999* [2003] AIRC 1137 Munro J observed that the Commission’s power to correct an “error” to an Order that it has made is analogous to the “slip and error rule” in Court. Munro J held that it allows a correction in circumstances where the error was unintentional, the order or judgment does not conform to the intention of the Court and there is no matter of controversy about the error.
89. It is submitted that the above principles are applicable to “error” in section 160.

**Step 1: Is there an ambiguity or uncertainty or error?**

90. It is submitted that there is no ambiguity or uncertainty.
91. As explained above, when the *Horticulture Award* was created the six member Full Bench presided over by Justice Giudice specifically considered how far the coverage of the *Horticulture Award* should extend and expressly ruled that it should be confined within the “farm gate”. The Full Bench relevantly found at [53]:

“Our overall approach to coverage of the pastoral and horticultural awards is that they should be confined to agricultural production within the “farm gate.”

92. That the Full Bench which created the *Horticulture Award* deliberately put in place a location limit on coverage was confirmed by the Full Bench in *Mitolo Group Pty Ltd v*

*National Union of Workers* [2015] FWCFB 2524 at [46] wherein it accepted that “*work location was intended to be a critical element in the coverage of the Horticulture Award...*”.

93. There is no merit in the submission that the *Horticulture Award* contains an ambiguity or uncertainty. It must fail. The creators of the Award expressly intended for the coverage of the Award should be confined within the “farm gate”. The unique situation in this matter is that the Commission has the benefit of the decision which created the *Horticulture Award*. The submissions which are made about the predecessor awards are of little assistance in these circumstances.
94. Turning to the other threshold question of whether there is an “error” it is submitted that it cannot be said that the error was unintentional, nor that the coverage of the *Horticulture Award* does not conform to the intention of the Full Bench which created it and finally it is matter of controversy between the parties. In summary, this ambitious claim is fundamentally misconceived and must fail. It is noted that understandably this particular claim is not made by the AIG.
95. On the basis that there is not an ambiguity, uncertainty or error established this application must be dismissed.

**Step 2: If there an ambiguity or uncertainty or error how should the Commission exercise its discretion?**

96. In the event that contrary to the above submissions the Commission finds that there is an ambiguity or uncertainty or error the NUW makes the following submissions.

97. It is submitted that the Commission should exercise its discretion by refusing to grant the variation. The NUW relies on the matters set out in Part A above.
98. The employer parties seek to have any variation granted under section 160 applied retrospectively.
99. It is submitted that the employer parties have failed to establish “exceptional circumstances” within the meaning of section 165(2)(b). Accordingly, the Commission should refuse to grant any retrospectivity.

**Disposition**

100. The NUW submits that the Commission should dismiss the four yearly review application and the ambiguity, uncertainty or error application.

**Yasser Bakri**

Castan Chambers  
Counsel for the NUW  
31 July 2017

## SCHEDULE 1

	Storage Services Award		Horticulture Award		Difference	
	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly
<b>Ordinary Hourly rates</b>						
<b>Full &amp; Part Time</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$19.38	\$736.40	\$17.70	\$672.70	\$1.68	\$63.70
Level 2 / Grade 2	\$19.56	\$743.20	\$18.21	\$692.10	\$1.35	\$51.10
Level 3 / Grade 3	\$20.13	\$765.10	\$18.74	\$712.00	\$1.39	\$53.10
Level 4 / Grade 4	\$20.72	\$787.40	\$19.44	\$738.90	\$1.28	\$48.50
Level 5 (Horticulture Award)			\$20.61	\$783.30		
<b>Casuals</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$24.23		\$22.13		\$2.10	
Level 2 / Grade 2	\$24.45		\$22.76		\$1.69	
Level 2 / Grade 2	\$25.16		\$23.43		\$1.73	
Level 4 / Grade 4	\$25.90		\$24.30		\$1.60	
Level 5 (Horticulture Award)			\$25.76			
<b>Shift allowances/loadings</b>						
<b>Full &amp; Part Time</b>						
<b>Early Morning Shift</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$21.80	\$828.40	\$17.70	\$672.60	\$4.10	\$155.80
Level 2 / Grade 2	\$22.01	\$836.38	\$18.21	\$691.98	\$3.80	\$144.40
Level 3 / Grade 3	\$22.65	\$860.70	\$18.74	\$712.12	\$3.91	\$148.58
Level 4 / Grade 4	\$23.31	\$885.78	\$19.44	\$738.72	\$3.87	\$147.06
Level 5 (Horticulture Award)			\$20.61	\$783.18		
<b>Afternoon Shift</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$22.29	\$847.02	\$20.36	\$773.68	\$1.93	\$73.34
Level 2 / Grade 2	\$22.49	\$854.62	\$20.94	\$795.72	\$1.55	\$58.90
Level 3 / Grade 3	\$23.15	\$879.70	\$21.55	\$818.90	\$1.60	\$60.80
Level 4 / Grade 4	\$23.83	\$905.54	\$22.36	\$849.68	\$1.47	\$55.86
Level 5 (Horticulture Award)			\$23.70	\$900.60		
<b>Night Shift</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$25.19	\$957.22	\$20.36	\$773.68	\$4.83	\$183.54
Level 2 / Grade 2	\$25.43	\$966.34	\$20.94	\$795.72	\$4.49	\$170.62
Level 3 / Grade 3	\$26.17	\$994.46	\$21.55	\$818.90	\$4.62	\$175.56
Level 4 / Grade 4	\$26.94	\$1,023.72	\$22.36	\$849.68	\$4.58	\$174.04
Level 5 (Horticulture Award)			\$23.70	\$900.60		
<b>Casuals</b>						
<b>Early Morning Shift</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$26.65		\$22.13		\$4.52	
Level 2 / Grade 2	\$26.90		\$22.76		\$4.14	
Level 3 / Grade 3	\$27.68		\$23.43		\$4.25	
Level 4 / Grade 4	\$28.49		\$24.30		\$4.19	
Level 5 (Horticulture Award)			\$25.76			
<b>Afternoon Shift</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$27.13		\$22.13		\$5.00	
Level 2 / Grade 2	\$27.38		\$22.76		\$4.62	
Level 3 / Grade 3	\$28.18		\$23.43		\$4.75	
Level 4 / Grade 4	\$29.01		\$24.30		\$4.71	
Level 5 (Horticulture Award)			\$25.76			
<b>Night Shift</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$30.04		\$22.13		\$7.91	
Level 2 / Grade 2	\$30.32		\$22.76		\$7.56	
Level 3 / Grade 3	\$31.20		\$23.43		\$7.77	
Level 4 / Grade 4	\$32.12		\$24.30		\$7.82	
Level 5 (Horticulture Award)			\$25.76			
<i>Note: It is the NUW's position that Casual workers covered by the Horticulture Award are entitled to shift allowances. Widespread industry practice is to not pay Casual workers shift allowances.</i>						
<b>Overtime &amp; Weekend Work</b>						
<b>Overtime</b>						
<b>Full &amp; Part Time</b>						
<b>First 2 hours</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$29.07		\$26.55		\$2.52	
Level 2 / Grade 2	\$29.34		\$27.32		\$2.02	
Level 3 / Grade 3	\$30.20		\$28.11		\$2.09	
Level 4 / Grade 4	\$31.08		\$29.16		\$1.92	
Level 5 (Horticulture Award)			\$30.92			
<b>After 2 hours</b>						
Level 1 / Grade 1 (SSW after 12 months)	\$38.76		\$26.55		\$12.21	



Level 2 / Grade 2	\$39.12	\$27.32	\$11.80
Level 3 / Grade 3	\$40.26	\$28.11	\$12.15
Level 4 / Grade 4	\$41.44	\$29.16	\$12.28
Level 5 (Horticulture Award)		\$30.92	
<b>Casuals</b>			
<b>First 2 hours</b>			
Level 1 / Grade 1 (SSW after 12 months)	\$33.92	\$22.13	\$11.79
Level 2 / Grade 2	\$34.23	\$22.76	\$11.47
Level 3 / Grade 3	\$35.23	\$23.43	\$11.80
Level 4 / Grade 4	\$36.26	\$24.30	\$11.96
Level 5 (Horticulture Award)		\$25.76	
<b>After 2 hours</b>			
Level 1 / Grade 1 (SSW after 12 months)	\$43.61	\$22.13	\$21.48
Level 2 / Grade 2	\$44.01	\$22.76	\$21.25
Level 3 / Grade 3	\$45.29	\$23.43	\$21.86
Level 4 / Grade 4	\$46.62	\$24.30	\$22.32
Level 5 (Horticulture Award)		\$25.76	
<b>Weekend work</b>			
<b>Full &amp; Part Time</b>			
<b>Saturday</b>			
Level 1 / Grade 1 (SSW after 12 months)	\$29.07	\$26.55	\$2.52
Level 2 / Grade 2	\$29.34	\$27.32	\$2.02
Level 3 / Grade 3	\$30.20	\$28.11	\$2.09
Level 4 / Grade 4	\$31.08	\$29.16	\$1.92
Level 5 (Horticulture Award)		\$30.92	
<b>Sunday</b>			
		Outside "Harvest Period"	
Level 1 / Grade 1 (SSW after 12 months)	\$38.76	\$35.40	\$3.36
Level 2 / Grade 2	\$39.12	\$36.42	\$2.70
Level 3 / Grade 3	\$40.26	\$37.48	\$2.78
Level 4 / Grade 4	\$41.44	\$38.88	\$2.56
Level 5 (Horticulture Award)		\$41.22	
		Harvest Period - First 5 hours within first 8 hours of overtime per week	
Level 1 / Grade 1 (SSW after 12 months)	\$38.76	\$26.55	\$12.21
Level 2 / Grade 2	\$39.12	\$27.32	\$11.80
Level 3 / Grade 3	\$40.26	\$28.11	\$12.15
Level 4 / Grade 4	\$41.44	\$29.16	\$12.28
Level 5 (Horticulture Award)		\$30.92	
		Harvest Period - After 8 hours overtime in week or after 5 hours work	
Level 1 / Grade 1 (SSW after 12 months)	\$38.76	\$35.40	\$3.36
Level 2 / Grade 2	\$39.12	\$36.42	\$2.70
Level 3 / Grade 3	\$40.26	\$37.48	\$2.78
Level 4 / Grade 4	\$41.44	\$38.88	\$2.56
Level 5 (Horticulture Award)		\$41.22	
<b>Casuals</b>			
<b>Saturday</b>			
Level 1 / Grade 1 (SSW after 12 months)	\$33.92	\$22.13	\$11.79
Level 2 / Grade 2	\$34.23	\$22.76	\$11.47
Level 3 / Grade 3	\$35.23	\$23.43	\$11.80
Level 4 / Grade 4	\$36.26	\$24.30	\$11.96
Level 5 (Horticulture Award)		\$25.76	
<b>Sunday</b>			
Level 1 / Grade 1 (SSW after 12 months)	\$43.61	\$22.13	\$21.48
Level 2 / Grade 2	\$44.01	\$22.76	\$21.25
Level 3 / Grade 3	\$45.29	\$23.43	\$21.86
Level 4 / Grade 4	\$46.62	\$24.30	\$22.32
Level 5 (Horticulture Award)		\$25.76	
<i>Note: Industry contention is that Casual workers covered by the Horticulture Award are not entitled to any Overtime pay. It is the NUW's position that Casual workers are entitled to Overtime pay in the Horticulture Award. Current widespread industry practice is to not pay Casual workers any overtime rates.</i>			
<b>Public holidays</b>			
<b>Full &amp; Part Time</b>			
Level 1 / Grade 1 (SSW after 12 months)	\$48.45	\$35.40	\$13.05
Level 2 / Grade 2	\$48.90	\$36.42	\$12.48
Level 3 / Grade 3	\$50.33	\$37.48	\$12.85
Level 4 / Grade 4	\$51.80	\$38.88	\$12.92
Level 5 (Horticulture Award)		\$41.22	
<b>Casuals</b>			
Level 1 / Grade 1 (SSW after 12 months)	\$53.30	\$39.83	\$13.47
Level 2 / Grade 2	\$53.79	\$40.97	\$12.82

Level 3 / Grade 3	\$55.36	\$42.17	\$13.19
Level 4 / Grade 4	\$56.98	\$43.74	\$13.24
Level 5 (Horticulture Award)		\$46.37	
<b>Piecerates</b>			
	No provision for piecework; all hourly employment	Piecework agreements can be made under the Horticulture Award which can give the effect of workers earning less than the minimum ordinary hourly rates	
* Note: Differences in Allowances have not been detailed here, however where there are similar allowances in both Awards, the Storage Services Award allowances are slightly higher.			

## SCHEDULE 2

ROLE (PER TABLE OF WORK CLASSIFICATIONS)	STORAGE WORKER	WHOLESALE WORKER
<p><i>Transport (eg forklift driver/product tipper)-</i> Produce is transported in 4 tonne and 8 tonne bins on Mitolo Group fleet trucks or tractors and then tipped into hoppers.</p> <p>Packed product is moved around the packing shed at various stages of production.</p>	<p><b>Storeworker grade 1</b></p> <ul style="list-style-type: none"> <li>• B.1.2(a): responsible for quality of their own work subject to detailed direction.</li> <li>• B.1.2(d): Exercises discretion within their level of skills and training</li> <li>• B.1.2(iii): Allocating and retrieving goods from specific warehouse areas.</li> <li>• B.1.2(vii): use of non-licensed material handling equipment</li> </ul> <p><b>Storeworker grade 2</b></p> <ul style="list-style-type: none"> <li>• B.2.2(e)(i): Licensed operation of all appropriate materials handling equipment.</li> <li>• B.2.2(e)(ii): Use of tools and equipment within the warehouse (basic non-trades maintenance).</li> </ul> <p><b>Storeworker grade 3</b></p> <ul style="list-style-type: none"> <li>• B.3.2(f)(ii): operation of all materials handling equipment under licence.</li> <li>• B.3.2(f)(iii): development and refinement of a store layout including proper location of goods and their receipt and dispatch.</li> </ul>	<p><b>Wholesale grade 1</b></p> <ul style="list-style-type: none"> <li>• B.5.1(m): work which is incidental to or in connection with points B.5.1(a) and (b)</li> </ul> <p><b>Wholesale grade 2</b></p> <ul style="list-style-type: none"> <li>• B.6.2(a) fork-lift operator</li> <li>• B.6.2(b) ride-on equipment operator</li> </ul>

**SCHEDULE 2**

<b>ROLE (PER TABLE OF WORK CLASSIFICATIONS)</b>	<b>STORAGE WORKER</b>	<b>WHOLESALE WORKER</b>
<p><i>Washing</i></p> <p><i>Potatoes delivered from incoming trucks and are mechanically placed onto a wash hopper which requires consistent maintenance and quality control checks.</i></p> <p><i>Chemicals are applied, including SO2 and chlorine, pH testing is undertaking, waterlevels and hydro coolers are maintained, daily checks on grey water, monitoring filtration plant, detecting errors and advising produce damage/quality concerns to harvest crew and supervisors.</i></p>	<p><b>Storeworker grade 1</b></p> <ul style="list-style-type: none"> <li>• B.1.2(a): responsible for quality of their own work subject to detailed direction.</li> <li>• B.1.2(d): Exercises discretion within their level of skills and training.</li> <li>• B.1.2 (v) periodic stock-checks.</li> <li>• B.1.2 (iv) basic operation of computer terminal or similar equipment.</li> <li>• B.1.2(vii): use of non-licensed material handling equipment.</li> </ul> <p><b>Storeworker grade 2</b></p> <ul style="list-style-type: none"> <li>• B.2.2(a): Able to understand detailed instructions and work from procedures</li> <li>• B.2.2(c): Responsible for quality of their own work</li> <li>• B.2.2(ii): use of tools and equipment within the warehouse (basic non-trades maintenance)</li> <li>• B.2.2(e)(i): Licensed operation of all appropriate materials handling equipment.</li> </ul> <p><b>Storeworker grade 3</b></p> <ul style="list-style-type: none"> <li>• B.3.2(a): Understands and is responsible for quality control standards</li> </ul> <p><b>Storeworker grade 4</b></p>	<p><b>Wholesale grade 1</b></p> <ul style="list-style-type: none"> <li>• B.5.1(b) the pre-packing or packing, weighing, assembling, pricing or preparing of goods or provisions or produce for sale.</li> <li>• B.5.1(i): loss prevention.</li> </ul> <p><b>Wholesale grade 4</b></p> <ul style="list-style-type: none"> <li>• B.8.2(d): buying/ordering requiring the exercise of discretion as to price, quantity, quality, etc.</li> </ul>

## SCHEDULE 2

ROLE (PER TABLE OF WORK CLASSIFICATIONS)	STORAGE WORKER	WHOLESALE WORKER
	<ul style="list-style-type: none"> <li>• B.4.2(a): Implements quality control techniques and procedures</li> </ul>	
<p><i>Grading</i> Product is graded (involving cutting) in accordance with quality, size, and customer specifications, and then approved or rejected.</p> <p>Variables are monitored, errors are detected and collective and preventative action is recommended via feedback to graders.</p>	<p><b>Storeworker grade 1</b></p> <ul style="list-style-type: none"> <li>• B.1.2(a): responsible for quality of their own work subject to detailed direction.</li> <li>• B.1.2(d): Exercises discretion within their level of skills and training.</li> <li>• B.1.2(ii): preparation and receipt of appropriate documentation including liaison with suppliers.</li> <li>• B.1.2 (v) periodic stock-checks.</li> <li>• B.1.2 (iv) basic operation of computer terminal or similar equipment.</li> <li>• B.1.2(vii): use of non-licensed material handling equipment.</li> </ul> <p><b>Storeworker grade 2</b></p> <ul style="list-style-type: none"> <li>• B.2.2(ii): use of tools and equipment within the warehouse (basic non-trades maintenance).</li> <li>• B.2.2(e)(i): Licensed operation of all appropriate materials handling equipment.</li> </ul> <p><b>Storeworker grade 3</b></p> <ul style="list-style-type: none"> <li>• B.3.2(a): Understands and is responsible for quality control standards.</li> </ul>	<p><b>Wholesale grade 1</b></p> <ul style="list-style-type: none"> <li>• B.5.1(b) the pre-packing or packing, weighing, assembling, pricing or preparing of goods or provisions or produce for sale</li> <li>• B.5.1(i) loss prevention</li> <li>• B.5.1(l): the receipt, preparation, packing of goods for repair or replacement and the minor repair of goods</li> <li>• B.5.1(m) work which is incidental to or in connection with (b), (i) and (l) [of the] above</li> </ul> <p><b>Wholesale grade 4</b></p> <ul style="list-style-type: none"> <li>• B.8.2(c): stock control</li> </ul>

**SCHEDULE 2**

<b>ROLE (PER TABLE OF WORK CLASSIFICATIONS)</b>	<b>STORAGE WORKER</b>	<b>WHOLESALE WORKER</b>
	<p><b>Storeworker grade 4</b></p> <ul style="list-style-type: none"> <li>• B.4.2(a): Implements quality control techniques and procedures.</li> <li>• B.4.2(g)(ii): Liaising with management, suppliers and customers with respect to stores operations.</li> </ul>	
<p><i>Packaging</i></p> <p><i>Graded product is sent to packing lines where machines are set up to enable packing in accordance with customer specifications</i></p> <p><i>Machines require configuration to ensure the correct produce is placed in the correct packaging, including coding and allocation of "use by" date and traceability</i></p> <p><i>Routine product inspection is performed and adjustments are made to machinery as required</i></p>	<p><b>Storeworker grade 1</b></p> <ul style="list-style-type: none"> <li>• B.1.2(a): responsible for quality of their own work subject to detailed direction.</li> <li>• B.1.2(d): Exercises discretion within their level of skills and training.</li> <li>• B.1.2(f)(i): storing and packing of goods and materials in accordance with appropriate procedures and/or regulations.</li> <li>• B.1.2 (f)(v) periodic stock-checks.</li> <li>• B.1.2 (f)(iv) basic operation of computer terminal or similar equipment.</li> <li>• B.1.2 (f)(vii): use of non-licensed material handling equipment.</li> </ul> <p><b>Storeworker grade 2</b></p> <ul style="list-style-type: none"> <li>• B.2.2(a): Able to understand detailed instructions and work from procedures.</li> <li>• B.2.2(c): Responsible for quality of their own work.</li> </ul>	<p><b>Wholesale grade 1</b></p> <ul style="list-style-type: none"> <li>• B.5.1(b): the pre-packing or packing, weighing, assembling, pricing or preparing of goods or provisions of produce for sale</li> <li>• B.5.1(g): the wrapping or ppacking of goods for dispatch and the dispatch of goods</li> <li>• B.5.1(l): the receipt, preparation, packing of goods for repair or replacement and the minor repair of goods</li> <li>• B.5.1(m): work which is incidental to or in connection with (b), (g) and (l) above</li> </ul> <p><b>Wholesale grade 4</b></p> <ul style="list-style-type: none"> <li>• B.8.2(c): stock control</li> </ul>

**SCHEDULE 2**

<b>ROLE (PER TABLE OF WORK CLASSIFICATIONS)</b>	<b>STORAGE WORKER</b>	<b>WHOLESALE WORKER</b>
	<ul style="list-style-type: none"> <li>• B.2.2(ii): use of tools and equipment within the warehouse (basic non-trades maintenance).</li> <li>• B.2.2(e)(i): Licensed operation of all appropriate materials handling equipment.</li> </ul> <p><b>Storeworker grade 3</b></p> <ul style="list-style-type: none"> <li>• B.3.2(a): Understands and is responsible for quality control standards.</li> <li>• B.3.2(f)(ii): operation of all materials handling equipment under license.</li> <li>• B.3.2(c): Competent keyboard skills.</li> </ul> <p><b>Storeworker grade 4</b></p> <ul style="list-style-type: none"> <li>• B.4.2(a): Implements quality control techniques and procedures.</li> <li>• B.4.2(e): Exercises discretion within the scope of this grade.</li> </ul>	
<p><i>Packaged produce labour</i></p> <p><i>Finished product is stacked onto pallets so that it can be dispatched to wholesale markets and warehouses</i></p>	<p><b>Storeworker grade 1</b></p> <ul style="list-style-type: none"> <li>• B.1.2(a): responsible for quality of their own work subject to detailed direction.</li> <li>• B.1.2(d): Exercises discretion within their level of skills and training.</li> </ul>	<p><b>Wholesale grade 1</b></p> <ul style="list-style-type: none"> <li>• B.5.1(b): the pre-packing or packing, weighing assembling, pricing or preparing of goods or provisions or produce for sale</li> </ul>

## SCHEDULE 2

ROLE (PER TABLE OF WORK CLASSIFICATIONS)	STORAGE WORKER	WHOLESALE WORKER
<p><i>Machinery requires set up, basic adjustments and operation, including changing machine configuration to bagging, crates cartons etc</i></p>	<ul style="list-style-type: none"> <li>• B.1.2(f)(i): storing and packing of goods and materials in accordance with appropriate procedures and/or regulations.</li> <li>• B.1.2(f)(iii): Allocating and retrieving goods from specific warehouse areas.</li> <li>• B.1.2 (iv) basic operation of computer terminal or similar equipment.</li> <li>• B.1.2(vii): use of non-licensed material handling equipment</li> </ul> <p><b>Storeworker grade 2</b></p> <ul style="list-style-type: none"> <li>• B.2.2(a): Able to understand detailed instructions and work from procedures.</li> <li>• B.2.2(c): Responsible for quality of their own work.</li> <li>• B.2.2(ii): use of tools and equipment within the warehouse (basic non-trades maintenance).</li> <li>• B.2.2(e)(i): Licensed operation of all appropriate materials handling equipment.</li> </ul> <p><b>Storeworker grade 3</b></p> <ul style="list-style-type: none"> <li>• B.3.2(a): Understands and is responsible for quality control standards.</li> <li>• B.3.2(i): Use of a computer terminal for purposes such as the maintenance of a deposit storage system, information input/retrieval, etc. At a higher level than grade 2.</li> </ul>	<ul style="list-style-type: none"> <li>• B.5.1(g): the wrapping or packing of goods for dispatch and the dispatch of goods</li> <li>• B.5.1(m): work which is incidental to or in connection with (b) and (g) above</li> </ul> <p><b>Wholesale grade 2</b></p> <ul style="list-style-type: none"> <li>• Ride-on operator equipment</li> </ul> <p><b>Wholesale grade 4</b></p> <ul style="list-style-type: none"> <li>• B.8.2(c): stock control</li> </ul>



## SCHEDULE 2

ROLE (PER TABLE OF WORK CLASSIFICATIONS)	STORAGE WORKER	WHOLESALE WORKER
	<ul style="list-style-type: none"> <li>• B.3.2(f)(iii): Development and refinement of a store layout including proper location of goods and their receipt and dispatch.</li> </ul> <p><b>Storeworker grade 4</b></p> <ul style="list-style-type: none"> <li>• B.4.2(a): Implements quality control techniques and procedures.</li> <li>• B.4.2(g)(iii): Maintaining control registers including inventory control and being responsible for the preparation and reconciliation of regular reports or stock movement, dispatches, etc.</li> </ul>	
<p><i>Quality Control</i></p> <p><i>A final quality inspection of finished stock is performed by employees trained to inspect and either pass or reject product on the basis of quality indicators such as disease, breakdown, brown staining, bleak heart, scabbing, cold cracks and skinning</i></p>	<p><b>Storeworker grade 1</b></p> <ul style="list-style-type: none"> <li>• B.1.2(a): responsible for quality of their own work subject to detailed direction.</li> <li>• B.1.2(d): Exercises discretion within their level of skills and training.</li> <li>• B1.2.(f)(v): Periodic stock checks .</li> </ul> <p><b>Storeworker grade 3</b></p> <ul style="list-style-type: none"> <li>• B.3.2(a): Understands and is responsible for quality control standards.</li> </ul> <p><b>Storeworker grade 4</b></p> <ul style="list-style-type: none"> <li>• B.4.2(a): Implements quality control techniques and procedures.</li> </ul>	<p><b>Wholesale grade 1</b></p> <ul style="list-style-type: none"> <li>• B.5.1(i): loss prevention</li> <li>• B.5.1(l): the receipt, preparation, packing of goods for repair or replacement and the minor repair of goods</li> <li>• B.5.1(m): work which is incidental to or in connection with (i) and (l) above</li> </ul> <p><b>Wholesale grade 4</b></p> <ul style="list-style-type: none"> <li>• B.8.2(c): stock control</li> </ul>

## SCHEDULE 2

ROLE (PER TABLE OF WORK CLASSIFICATIONS)	STORAGE WORKER	WHOLESALE WORKER
<p><i>Supervision</i></p> <p><i>The washing, grading and packaging of produce is overseen to ensure all produce meets required specification and is packaged in accordance with food safety standards</i></p> <p><i>Any detection of defects/variables are investigated and preventative measures are communicated back to the harvest crew</i></p>	<p><b>Storeworker grade 2</b></p> <ul style="list-style-type: none"> <li>• B.2.2(b): Able to co-ordinate work in a team environment under limited supervision.</li> <li>• B.2.2(d): Possesses sound interpersonal and communication skills.</li> </ul> <p><b>Storeworker grade 3</b></p> <ul style="list-style-type: none"> <li>• B.3.2(a): Understands and is responsible for quality control standards.</li> <li>• B.3.2(b): Possesses an advanced level of interpersonal and communication skills.</li> <li>• B.3.2(e): May perform work requiring minimal supervision either individually or in a team environment.</li> <li>• B.3.2(f)(iii): Employee who is responsible for the supervision and the responsibility for the conduct of work of up to 10 employees.</li> </ul> <p><b>Storeworker grade 4</b></p> <ul style="list-style-type: none"> <li>• B.4.2(a): Implements quality control techniques and procedures.</li> <li>• B.4.2(c): Highly developed level of interpersonal and communication skills.</li> <li>• B.4.2(d): Ability to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction.</li> </ul>	<p><b>Wholesale grade 3</b></p> <ul style="list-style-type: none"> <li>• B.7.2(a): Supervisory assistance to a designated section manager or team leader</li> </ul> <p><b>Wholesale grade 4</b></p> <ul style="list-style-type: none"> <li>• B.8.2(a): management of a defined section/department</li> <li>• B.8.2(b): supervision of staff</li> <li>• B.8.2(c): stock control</li> <li>• B.8.2(d): Buying/ordering requiring the exercise of discretion as to price, quantity, quality, etc.</li> </ul>

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ROLE (PER TABLE OF WORK CLASSIFICATIONS)	STORAGE WORKER	WHOLESALE WORKER
	<ul style="list-style-type: none"> <li>• B.4.2(e): Exercises discretion within the scope of this grade.</li> <li>• B.4.2(f) Exercises skills attained through the successful completion of an appropriate warehousing certificate.</li> <li>• B.4.2(g)(i): Liaising with management, suppliers and customers with respect to stores operations.</li> <li>• B.4.2(g)(ii): Detailing and co-ordinating activities of other storeworkers and acting in a leading hand capacity for in excess of 10 storeworkers.</li> <li>• B.4.2(g)(iii): Maintaining control registers including inventory control and being responsible for the preparation and reconciliation of regular reports or stock movement, dispatches, etc.</li> </ul>	
<p><b>NOTES:</b></p>	<p><b><u>Broad skills/responsibilities per Storage Services and Wholesale Award 2010</u></b></p> <p><b>Storeworker grade 1</b></p> <ul style="list-style-type: none"> <li>• B.1.2(a): responsible for quality of their own work subject to detailed direction.</li> <li>• B.1.2(b): works in a team environment and/or under routine supervision.</li> <li>• B.1.2(c): undertakes duties in safe and responsible manner.</li> <li>• B.1.2(d): Exercises discretion within their level of skills and training.</li> <li>• B.1.2(e): Possesses basic interpersonal and communication skills.</li> </ul>	<p>Note: Clause 3.1 defines wholesale:</p> <p><b>Wholesale</b> means the sale of commodities in large quantities other than to final consumers</p>

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ROLE (PER TABLE OF WORK CLASSIFICATIONS)	STORAGE WORKER	WHOLESALE WORKER
	<ul style="list-style-type: none"> <li>• B.1.2(f)(iv): Basic operation of computer terminal or similar equipment.</li> <li>• B.1.2(f)(vi): Responsible for housekeeping in own work environment.</li> </ul> <p><b>Storeworker grade 2</b></p> <ul style="list-style-type: none"> <li>• B.2.2(a): Able to understand detailed instructions and work from procedures.</li> <li>• B.2.2(b): Able to co-ordinate work in a team environment under limited supervision.</li> <li>• B.2.2(c): Responsible for quality of their own work.</li> <li>• B.2.2(d): Possesses sound interpersonal and communication skills.</li> </ul> <p><b>Storeworker grade 3</b></p> <ul style="list-style-type: none"> <li>• B.3.2(b): Possesses an advanced level of interpersonal and communication skills.</li> <li>• B.3.2(c): Competent keyboard skills.</li> <li>• B.3.2(d): Sound working knowledge of all warehousing/stores duties performed at levels below this grade, exercises discretion within scope of this grade.</li> <li>• B.3.2(e): May perform work requiring minimal supervision either individually or in team environment.</li> <li>• B.3.2(f)(iv): Employee who is responsible for the supervision of and the responsibility for the conduct of work of up to 10 employees.</li> </ul>	

## SCHEDULE 2

ROLE (PER TABLE OF WORK CLASSIFICATIONS)	STORAGE WORKER	WHOLESALE WORKER
	<p><b>Storeworker grade 4</b></p> <ul style="list-style-type: none"> <li>• B.4.2(b): Understands and is responsible for a warehouse or a large section of a warehouse.</li> <li>• B.4.2(c): Highly developed level of interpersonal and communication skills.</li> <li>• B.4.2(d): Ability to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction.</li> <li>• B.4.2(e): Exercises discretion within the scope of this grade.</li> <li>• B.4.2(f): Exercises skills attained through the successful completion of an appropriate warehousing certificate.</li> <li>• B.4.2(g)(ii): Detailing and co-ordinating activities of other storeworkers and acting in a leading hand capacity for in excess of 10 storeworkers.</li> </ul>	