

Submission

13 February 2009



Horticulture Australia Council

Submissions concerning the Exposure Draft of the Horticulture Award 2010

Stage 2 of Award Modernisation:
Agricultural Group

Modern Horticulture Industry Award

HAC Submission

1 Introduction

Horticulture Australia Council (**HAC**) welcomes the opportunity to make further submissions on the specific terms of the Exposure Draft of the Horticulture Award 2010 (**Exposure Draft**) that has now been published by the Commission.

HAC does not propose to repeat the matters that it has already dealt with in its previous submissions in these proceedings. It continues to rely upon those submissions. The purpose of these submissions is to comment on the specific provisions of the Exposure Draft.

HAC has significant concerns for its members if an award is made in the terms of the exposure draft. Its members report that an award in those terms will dramatically increase the cost of business, primarily because of the broad scale introduction of rigidities and the removal of important flexibilities.

HAC's concerns about the Exposure Draft can be grouped in the following broad categories:

- (a) The provisions of the Exposure Draft will impose a net additional cost upon employers. This is contrary to the express intention of the Award Modernisation Request. We have endeavoured to identify the terms of the Exposure Draft which have this effect and explain that effect and have set out, merely by way of example, specific case studies which serve as real-life examples. These illustrate that the additional cost imposed, for individual growers, could be in the order of 15% (and in some cases be as high as 42%).
- (b) A number of provisions within the Exposure Draft are different to the positions advocated by both HAC/NFF and the AWU (the key employer and employee organisations in this context). During the first round of consultations the Commission specifically asked the parties to confer in an attempt to reach an agreed position. In many different contexts in the award modernisation process the Commission has expressed a willingness to accord significant weight to positions agreed by the relevant industrial parties. HAC, the NFF and the AWU spent considerable time and effort in attempting to reach agreed positions; yet in a number of respects they appear to have been disregarded.
- (c) We acknowledge that in its statement of 23 January 2009 and its decision of 19 December 2008, the Commission expressed a desire to consider the inclusion of transitional provisions at a later stage in the process. Transitional provisions have, however, been included in the Exposure Draft. The use which appears to have been made of the transitional mechanism is, however, wholly one sided. That is, where there is a prospect of an employee receiving a benefit which is less generous than what a NAPSA under the current system provides, the Exposure Draft retains that benefit for a transitional period. However, a similar approach has not been taken where employers incur significant additional cost because of a term of the Exposure Draft. Work on weekends and increased casual loadings are the best examples.

2 Contents

These submissions are arranged as follows:

- Section 3 – The conditions of work in horticulture

- Section 4 – Hours of work
- Section 5 – Casual loading
- Section 6 – Piece rates
- Section 7 – Increase in costs under the Exposure Draft
- Section 8 – Scope of the Exposure Draft's operation
- Section 9 – Transitional arrangements
- Section 10 – Jury service
- Section 11 – Superannuation
- Schedule 1 – Case study example regarding piece rates
- Schedule 2 – Case studies and examples regarding hours of work
- Schedule 3 – Proposed clauses regarding pieceworkers and NES entitlements

3 The conditions of work in horticulture

Employers in the horticultural sector, most particularly those located in South Australia, Western Australia and Queensland, have enjoyed significant flexibility which is not present in some other industries. In previous submissions and consultations, HAC has sought to draw the Commissions attention to the unique conditions of work in the industry which have given rise to these flexibilities. Principally, those conditions relate to the intervention of nature in the manner in which an employer can plan work. The time at which various products ripen, for example, dictates when they must be harvested.

HAC contends that it is these conditions which have given rise to industrial tribunals fashioning terms and conditions which include flexibility to deploy labour in a way which allows the harvest to take place when nature dictates that it must.

The manner in which the award modernisation process has been conducted involves the preparation of submissions and public consultations so that all interested parties have an opportunity to have some input into the manner in which the rationalisation of various award terms should occur. Significantly, it has not involved the presentation of evidence on factual matters, the testing of that evidence and the making and reporting of specific findings in the manner customarily seen in proceedings before the Commission.

HAC is concerned that it is now proposed that significant flexibilities be removed in circumstances where its members have had no opportunity to present evidence about the unique conditions in the sector which justify those flexibilities – and the significant consequences for employers in removing or limiting them. Whilst no particular complaint is made in these submissions about the way the process has been conducted, HAC urges the Commission to start its consideration from the perspective that a case for the existence of these flexibilities has already been made and accepted by an industrial tribunal. As has been pointed out in other submissions, these industrial tribunals were all subject to statutory direction to fix fair and reasonable terms and conditions of employment. Hence, HAC submits that the Commission should remove or limit those flexibilities only in the most exceptional or unavoidable circumstances.

4 Hours of work

4.1 Ordinary time penalty rates

HAC is appreciative that the Commission did not adopt outright the hours of work provisions contained within the *Horticulture Industry (AWU) Award 2000* as was urged by the AWU. It appears that in choosing not to do so the Commission has concluded that in the circumstances of this industry, it is not appropriate to regard that award as the principal award.

However, HAC is very concerned about the concept of ordinary time penalty rates which has been adopted in clause 22.4 of the Exposure Draft. This concept is extremely rare in the horticulture industry and currently only exists within two NAPSAs that have a relatively minor reach within the sector.¹ The notion of an ordinary time penalty does not appear in the remaining 9 relevant instruments.

Of the two NAPSAs which contain this type of provision, both apply only in NSW, and one only applies only to mushroom growers. Accordingly, these provisions currently govern a very small number of employees.

HAC submits that the safety net system comprising modern awards and the NES should allow for flexible work practices. The circumstances of this industry do not warrant the imposition of inflexibilities which employers must seek to remove through bargaining.

The imposition of these penalties is a new impost across the great majority of the industry and involves the imposition of a very significant cost.

4.2 Time critical period

It was accepted during earlier consultations that once a decision was made to move away from the hours of work prescription in the existing federal award, there was some judgement that needed to be exercised in choosing which of the various NAPSA prescriptions were appropriate.

Having regard to this difficulty, HAC proposed the adoption of a concept of a “time critical period” as a means of balancing some limits on the number of days ordinary hours can be worked on the one hand and the reality that employers are at the mercy of nature and often have no ability to plan which days work needs to be performed on the other.

As set out in previous submissions², flexible ordinary hours of work during time critical periods is absolutely crucial to the operation of this industry. In this regard, we draw the Commission’s attention to the specific examples that we submitted to illustrate this point within our previous submissions.³

HAC notes that a lower penalty rate is applied in the Exposure Draft of the Pastoral Industry Award for the purposes of ‘feeding and watering stock.’⁴ This is one example of an approach where the nature of the work concerned gives rise to the imposition of the penalty, rather than merely the day or the time of the day when that work is performed.

¹ The NSW *Horticulture Industry (State) Award* and the NSW *Mushroom Industry Employees (State) Award*

² See section 3.17 of HAC’s submissions dated 24 November 2008.

³ See section 3.2 of HAC’s submissions dated 10 December 2008

⁴ See clause 30.1 of the Exposure Draft Pastoral Industry Award 2010.

5 Casual loading

HAC wishes to record its strong objection to the inclusion of a 25% casual loading within the Exposure Draft and refers to the previous submissions it has made in relation to this issue.⁵ This is a matter which will significantly disadvantage the great majority of employers in this Industry throughout Australia.

Since HAC was last given an opportunity to make submissions on this point, the Commission issued its decision dated 19 December 2008 which dealt in part with this issue.

It appears that the Commission's decision to set a 25% casual loading is at least in part based on the reasoning set out in paragraphs 48 and 51 of its decision dated 19 December 2008 with respect to the priority awards.

HAC respectfully submits that this reasoning does not justify the imposition of a 25% casual loading in the modern Horticulture Award for the following reasons:

- (a) It appears that a 25% casual loading was already a common feature of many awards which applied to employers in the industries that were subject to the priority stage of the award modernisation process. It seems that awards and NAPSAs in some industries even provided for a casual loading in excess of this amount. The 19 December decision records that a casual loading of 33 $\frac{1}{3}$ % existed and some higher loadings existed in those instruments. It was against that background that the Commission was able to conclude that fixing the loading at 25% would involve an increase in costs for some employers but equally would involve a reduction in costs for other employers.
- (b) This circumstance simply does not apply within the horticulture industry, where an increase to a 25% loading would represent a significant cost increase to the majority of employers. In short, none of the instruments being rationalised to create the modern Horticulture Award include a casual loading which is higher than this amount. Fixing the rate at 25% means selecting the highest and most costly loading. The great majority of employers will incur increased costs whilst none of them will enjoy a reduction in costs.
- (c) Next, it is respectfully submitted that the reasoning to the effect that it is 'desirable to standardise provisions to apply to casuals where it is practicable to do so to avoid claims in the future based on 'unjustified differences'⁶ is not appropriate in the horticulture industry. Here the various awards and NAPSAs being rationalised contain different casual loadings. It is HAC's submission that those loadings have been set by industrial tribunals having regard to the nature of work in the sector and the conditions under which that work is performed. If any application were made to increase the casual loading in one of those instruments, HAC's members would scrutinise such an application to form a judgement about whether an increase was justified. If it formed the view that it was not, it would oppose the application and present evidence to persuade the tribunal that this was not the case.
- (d) It seems that the effect of the Commission's reasoning on this point is to remove entirely the need for a case for such a claim to be justified, and to remove the rights of parties opposed to the increase to forensically challenge that justification. It is submitted that this is not the intention, nor the effect, of the Request.

⁵ See section 3.3(b) of HAC's submissions dated 24 November 2008.

⁶ Paragraph 48 of the Commission's 19 December 2008 decision.

6 Piece rates

6.1 Piece rates and the casual loading

HAC is appreciative that the Commission has adopted a 'genuine' piece rate provision and applied a 12.5% piece rate loading.

However, HAC respectfully submits that there is no basis for the Commission to decide that in the case of casual pieceworkers, the piece rate loading should be calculated on the basis of the base rate of pay plus the casual loading.⁷

First, this was not a proposal that was put forward by any party, including the AWU, in previous submissions.

Secondly, we have been unable to locate any decision where a court has considered the operation of any of the provisions in the instruments being rationalised and determined that a casual pieceworker is entitled to have their piecework loading calculated on the base rate plus the casual loading. HAC contends that the existing instruments do not require that this approach is taken.

Thirdly, as a matter of fact, HAC is informed that this is not the way that the piecework provisions are applied now or have been historically applied in the great bulk of the industry.

Fourthly, we also refer to the Commission's statement in its 19 December 2008 decision in which it stated:

'...as a general rule, where penalties apply the penalties and the casual loading are both to be calculated on the ordinary time rate.'

The approach taken in clause 10.4(d) of the Exposure Draft appears inconsistent with this statement.

Fifthly, there is a clearly discernable approach in the WR Act to treat separately hourly rate employees on the one hand, and piece rate employees on the other. It seems that hourly employees have an entitlement to a casual loading guaranteed but piece rate employees do not. HAC submits that this reflects the current status quo and that it should be maintained in modern awards.

The rationale for this fifth contention appears from the following:

(a) 'Basic piece rate of pay' vs 'basic periodic rate of pay'

Section 182 of the WR Act, amongst other things, outlines the guarantees of employees with respect to rates of pay under a preserved or new Australian Pay and Classification Scale.

More particularly, section 182(1) provides that an employee who is:

- covered by an APCS; and
- not a 'piece rate employee',

must be paid a 'basic periodic rate of pay' for each of the employee's guaranteed hours that is at least equal to the 'basic periodic rate' of pay payable under the APCS.

By contrast, section 182(2) provides that an employee who is:

- covered by an APCS; and
- a 'piece rate employee',

must be paid 'basic piece rates of pay' that are at least equal to the 'basic piece rates of pay' payable under the APCS.

⁷ As per clause 10.4 of the Exposure Draft Award

Therefore, section 182 clearly contemplates the distinction (on one hand) between employees who are to be paid based on a 'basic periodic rate of pay' and (on the other hand) 'piece rate employees' (i.e. pieceworkers) who are paid based on 'basic piece rates of pay'.

This distinction is particularly relevant in the context of determining which employees are entitled to the guaranteed casual loading under section 185 of the WR Act.

(b) Piece rate employees not entitled to casual loading guarantee

Section 185(1) and (2) of the WR Act provides as follows:

'(1) This section applies to a casual employee for whom, under section 182, there is a guaranteed 'basic periodic rate of pay', other than a casual employee in relation to whom the following paragraphs are satisfied:

(a) subsection 182(1) applies to the employee;

(b) the APCS that covers the employment of the employee does not contain casual loading provisions under which a casual loading is payable to the employee;

(c) the employee's employment is not covered by a workplace agreement.

(2) The casual employee must be paid, in addition to his or her actual basic periodic rate of pay, a casual loading that is at least equal to the guaranteed casual loading percentage of that actual basic periodic rate of pay.'

(emphasis added).

As set out above, subject to certain exceptions, section 185 of the WR Act guarantees the application of a casual loading to a casual employee in circumstances where the employee is guaranteed a 'basic periodic rate of pay' under section 182 of the WR Act. Hence, section 185 only contemplates the payment of a guaranteed casual loading with respect to 'non-piece rate' employees.

Accordingly, pieceworkers (including casual pieceworkers) are not entitled to the guaranteed casual loading under the WR Act.

(c) 'Carve out' for piece rate employees – section 208 of the WR Act

This position is confirmed by the 'carve out' with respect to casual pieceworkers in section 208 of the WR Act.

Section 208, which sets out provisions in relation to deriving preserved APCSs from pre-reform wage instruments, provides as follows:

'If a pre-reform wage instrument contains rate provisions determining one or more basic periodic rates of pay, or basic piece rates of pay, payable to employees, from the reform commencement, there is taken to be a preserved APCS that includes (subject to this Subdivision):

...

(c) any casual loading provisions of the instrument that determine casual loadings payable to employees, other than employees for whom the instrument provides basic piece rates of pay

...

(emphasis added).

This section confirms the specific exclusion in the application of any casual loading provisions to pieceworkers in a preserved APCS.

This supports that proposition that pieceworkers are not entitled to the benefit of a casual loading guarantee under the WR Act as a 'loading on another loading'.

(d) Explanatory memorandum

This position is also confirmed by the Explanatory Memorandum to the *Workplace Relations Amendment (Work Choices) Bill 2005* (Cth) (**EM**).

Item 373 of the EM states as follows:

'Proposed section 90H [re-numbered section 185 under the WR Act] would establish the guarantee of casual loadings for casual employees. It makes it clear that a casual loading is only guaranteed if the employee has a basic periodic rate of pay proposed under section 90F [re-numbered section 182 under the WR Act].

(emphasis added).

Item 348 of the EM states as follows:

'Piece rate of pay would mean a rate of pay that is expressed as a rate for a discrete or ascertainable output or task. This rate may incorporate a piece rate loading and/or casual loading.'

(emphasis added).

Based on the items of the EM above, it appears that the rationale for excluding pieceworkers (including casual employees who fall in this category) from the benefit of the guaranteed casual loading under the WR Act arises because it is intended that employees who are paid based on a 'piece rate of pay' are to be adequately compensated by such a rate of pay so as to not 'require' being guaranteed a casual loading to supplement their wages.

This analysis is consistent with item 348 of the EM, which indicates that there is scope for the incorporation of various loadings into a single piecework rate of pay for pieceworkers. This single rate would therefore not be otherwise amenable to further loadings, including casual loadings.

Having regard to these five factors, HAC submits that clause 10.4(d) of the modern Horticulture Award should be appropriately amended so that it is brought in line with the position in the existing instruments and reflects the WR Act with respect to casual loadings and piecework rates.

In particular, casual employees under the Horticulture Award should not be entitled to an additional casual loading of 25% in circumstances where they have the benefit of being paid at the relevant piecework rate (i.e. 12.5%).

Therefore, HAC submits that clause 10.4(d) should be as follows:

'For the purposes of clause 15 – Piecework rates, the calculation of piecework rates for a casual employee will be based on the hourly rates of pay for a casual employee applicable to the work to be performed, but not including the loading prescribed by subclause (b) of this clause.'

6.2 Definition of a pieceworker

HAC notes that section 21 of the proposed Fair Work Bill 2008 sets out the definition of a pieceworker. Subsection (1)(a) defines a pieceworker as, 'a national system employee to whom a modern award applies and who is defined or described in the award as a pieceworker.'

As a matter of caution HAC submits that it is perhaps useful to include a definition of a pieceworker in the award. This may be included in clause 3.1 or could be separately identified as a type of employment in clause 10.

6.3 Pieceworkers and the NES

The Commission has specifically asked interested parties to address the matters raised in paragraphs 44 and 45 of the consolidated Request.

The Draft Award that was proposed by HAC on 24 November 2008 enabled pieceworkers to be permanent or casual employees, and thereby set out associated provisions which dealt with the payment of NES entitlements to pieceworkers.

For the Commission's convenience, we have reproduced the relevant provisions from this Draft Award within Schedule 3.

7 Increase in costs under the Exposure Draft

7.1 Increase in costs

The proposed provisions of the Exposure Draft will, if implemented, represent a an increase in costs for employers across the industry, in some cases which will be both significant and critical . This will ultimately lead to one of two outcomes:

- (a) the increase in growers' input costs will lead to a direct increase in the cost of horticulture products. The structure and operation of the market is complex in this respect given the prevalence of agents and intermediaries and the buying power of a small number of dominant end customers; or
- (b) growers will be forced out of business and employees will be made redundant.

Each of these outcomes are obviously undesirable, particularly in the current economic climate.

7.2 Case studies and examples

There are many examples of the impact of the Exposure Draft on HAC's members. HAC wishes to bring the following examples to the Commission's attention by way of illustration.

(a) Schedule 1

At Schedule 1 to these submissions we have included a series of tables provided by a mushroom grower and member of the Australian Mushroom Growers' Association (which is in turn a member of HAC). The tables show a practical example of how the Exposure Draft would result in significant cost increases this employer.

These tables compare a casual pieceworker based on a 25kg hourly pick rate under the current *Horticulture Industry (AWU) Award 2000* as compared with the proposed position under the Exposure Draft. The grower instructs that a 25kg hourly pick rate is a conservative number, easily achievable by a picker. In particular, the tables show how the costs will increase as a result of the piece rate loading being based on the basic rate of pay plus the casual loading, rather than the basic rate of pay only. We note in this regard that these figures do not take into account the other cost increases within the proposed award, such as penalty rates for work on weekends.

In summary, Schedule 1 shows that under the Exposure Draft, this particular employer would incur additional costs of up to **\$342.26 per week per employee** for casual employees (which amounts to a **42%** increase), purely as a consequence of the calculation of the pieceworker loading.

(b) Schedule 2

At Schedule 2 to these submissions we have included two case studies, provided by members of Growcom in Queensland (which is in turn a member of HAC) which set out practical examples of how the Exposure Draft would result in cost increases, in some cases significant, to these businesses.

Lockyer Valley grower

The first case study is a grower in the Lockyer Valley, Queensland, growing a range of fruits. This case study demonstrates that the combination of:

- (1) an increase in the casual loading rate from 23% to 25%; and
- (2) the introduction of weekend penalty rates,

will result in significant increases in costs to this grower.

The grower in this case study relies on casual employees to meet demand during specific harvest periods for specific crops. The number of casual employees ranges from 5-15 in non-peak periods up to 40-50 during peak periods.

The requirements for harvesting particular crops dictates labour requirements. For example, to harvest figs, employees are required to harvest every tree every day (through 7 days of the week including public holidays which fall within those periods).

In summary, this case study shows that the increased cost to this business for a casual working a 38-hour week could be as high as \$128.44 per employee per week (for a Level 5 classification). Alternatively, even based on the conservative assumption that the 50 casuals who are required in peak season are all classified at Level 1, this would nevertheless increase the grower's weekly wage costs by **\$551**. Penalty rates would add to this cost.

The total increase in labour costs for this grower under the Exposure Draft is in the order of **5%**.

Granite Belt grower

The second case study is a grower in the Granite Belt region, Queensland, growing lettuce and broccoli on a small family farm. This case study demonstrates, as in the case of the Lockyer Valley grower, the Exposure Draft would involve significant increased labour costs.

This grower employs approximately 5 casuals in non-peak periods and up to 10 casuals in peak periods. Harvesting is required every day during peak harvest periods which, due to the nature of the crops, are determined by weather conditions and may vary considerably.

The weekly cost of casual employees during peak periods would increase as much as **\$528.20** (for 10 Level 3 casuals working a 38-hour week). This amount would increase further with penalty rates.

The total increase in labour costs for this grower under the Exposure Draft is in the order of **14.6%**.

8 Scope of the Exposure Draft's operation

8.1 Overlap with the Pastoral Industry Award

Both HAC/NFF⁸ and the AWU⁹ proposed that the intersection between the Horticulture Award and the Pastoral Industry Award be dealt with by inserting a relevant exclusion clause within the Pastoral Industry Award. Instead, the Commission has adopted a different approach which includes mutual exclusions within both draft awards.¹⁰

⁸ See section 5.3 of HAC's submissions dated 10 December 2008, and clause 4.3(j) of the NFF's Draft Agricultural Industry Award 2010 dated 10 December 2008.

⁹ See clause 4.4(e) of the AWU Draft Agriculture Industry Award 2010 dated 10 December 2008.

¹⁰ See clause 4.3(d) of the Exposure Draft Pastoral Industry Award 2010 and clause 4.3(f) of the Exposure Draft Horticulture Award 2010.

The relevant exclusion which it was suggested should appear in the Pastoral Industry Award was in the following terms:

“any work which otherwise would be covered by this award in circumstances where the principal activity of the employer is covered by the Horticultural Industry Award 2010”

HAC respectfully submits that the use of reciprocal exclusions to mark out this delineation in each of the Exposure Drafts is less clear and might lead to confusion and uncertainty. This outcome will ultimately lead to inefficiencies and is contrary to the requirements of the Request.

HAC's concern arises from the provision in the exposure draft of the Horticulture Award¹¹ to the effect that excluded from its coverage is 'a broadacre mixed farming enterprise as defined in the Pastoral Industry Award'. This exclusion appears in the definition of the 'horticulture industry' in clause 4.3(f).

The concern is that this exclusion results in a situation where a number of crops which the parties had agreed have historically been (and should be) part of the horticulture industry are excluded from coverage of the Horticulture Award.

This result appears to arise for the following reasons:

- (a) The Pastoral Industry Award could apply to the growing of crops which are not grown as part of a mixed enterprise, because:
- A 'broadacre mixed farming enterprise' is defined very broadly in the exposure draft of the Pastoral Industry Award¹² to include, amongst other things, 'a farming enterprise involving the growing of the broadacre field crops as defined'; and
 - 'Broadacre field crops' are then defined to mean, 'canola, wheat, hay, barley, oats, triticale, maize, millet, chickpeas, faba beans, lucerne, lupins, pigeon peas, sorghum, soybean, sunflower, and other crops grown as part of a broadacre mixed farming enterprise'.

Hence, a 'broadacre mixed farming enterprise' arguably extends to the growing of crops which are not in the list of crops in the definition of "Broadacre field crops"; nor which occurs in conjunction with the raising of livestock. This appears to be the case because of the word "involving" in the definition of "broadacre mixed farming enterprise."

In other words, the Pastoral Industry Award could apply to the growing of crops (which are not grown as part of a mixed enterprise) instead of the Horticulture Award. This might be the result even when the principal activity of the relevant employer is the growing of a horticultural crop.

- (b) The Pastoral Industry Award could apply to all crops grown as part of a mixed enterprise (regardless of the type of crops).

Even if the relevant crops are grown as part of the mixed enterprise, the drafting of the Pastoral Industry Award appears to result in a situation where any crops at all which are grown within such an enterprise will be covered by that Award rather than the Horticulture Award.

This is because the term, 'broadacre field crops' is defined very broadly to include a range of specified crops, many of which form part of the horticulture industry.¹³ The definition also extends to 'other crops grown as part of a broadacre mixed farming enterprise'. This circular reference arguably results in a situation where any crops at all which are grown as part of a broadacre mixed farming enterprise will be covered by the Pastoral Industry Award.

¹¹ Clause 4.3(f)

¹² Clause 3.1

¹³ Clause 3.1

On this basis, HAC submits that the formulation agreed by the parties on 10 December 2008 dealing with the overlap between the two awards should be implemented within the awards. That formulation is not only agreed but might well be a more simple and clear prescription.

8.2 Grape growing

HAC has made numerous submissions in support of its contention that the growing of all grapes should be included within the Exposure Draft, and why grape growing (for the purposes of making wine) should not be covered by a separate wine industry award.¹⁴

HAC's position is supported by the NFF. HAC also notes that similar submissions to this effect have been made on behalf of Wine Grape Growers' Australia (WGGA)¹⁵ and the Western Australian Wine Industry Association.¹⁶

It is accepted that at present this position has not found favour with the Commission. It is submitted that consideration of this issue might be deferred to stage 3 so that it can be ventilated in the context of the terms of any wine industry award. HAC submits that viticulture (including wine, table and dried grapes) should be included within the scope of the Exposure Draft at present and those who advocate another position can make that argument in stage 3.

8.3 Issues of scope that are of particular concern to the mushroom industry

The definition of 'horticulture industry' in the Exposure Draft does not extend to:

- (a) 'producing compost for, cultivating, picking, preparing for packing, packing and/or forwarding of fungi or mushrooms'; and
- (b) 'clearing, fencing, trenching, draining or otherwise preparing or treating' of *land*, but does not apply these activities to 'other growing medium'. This inclusion will have relevance not only in the mushroom farming sector but also in hydroponics, greenhouses and other establishments.

Each of these activities were proposed by both HAC/NFF¹⁷ and the AWU¹⁸.

The current definition of horticulture industry in the Exposure Draft does not adequately cover the range of activities that are specific to the mushroom industry. HAC therefore submits that these elements be added into the definition to ensure that this important part of the horticulture industry is covered by the award. The omission of these activities might lead to uncertainty and confusion. It is not immediately apparent that there are reasons why these activities should not be included.

8.4 Other issues of scope

HAC also notes its concern in relation to the following issues of scope:

- (a) The Exposure Draft does not apply to employers engaged in the provision of services to the horticulture industry (as proposed by HAC/NFF¹⁹).

¹⁴ See HAC's submissions dated 15 December 2008 and paragraph 3.1(b) of HAC's submissions dated 24 November 2008.

¹⁵ See WGGA submissions dated 11 December 2008 and 15 December 2008

¹⁶ See submissions dated 9 February 2009

¹⁷ See clause 4.2 of the HAC/NFF Draft Award dated 10 December 2008.

¹⁸ See clause 4.3 of the AWU Draft Award dated 10 December 2008.

¹⁹ See clause 4.1 of the HAC/NFF Draft Award dated 10 December 2008.

- (b) The definition of 'horticultural crops' in the Exposure Draft does not include 'herbs' (as proposed by HAC/NFF²⁰ and the AWU²¹). There is no apparent reason for this omission, as herbs are clearly part of the horticulture industry.
- (c) The definition of 'horticulture industry' in the Exposure Draft does not apply to 'storing, grading, dehydration, crystallisation, processing, dispatching or forwarding' of horticultural products (as proposed by both HAC/NFF²² and the AWU²³). HAC refers to its previous submissions concerned the perceived overlap between the Horticulture Award and other awards such as the *Food Preservers Award 2000*.²⁴ The real problem here concerns on-farm activities such as where a chilli farmer might dry produce on the farm before selling them. Or, for example, where a grape grower may dehydrate grapes on the vine prior to shipping. These are activities which ought to be the subject of the same award as the growing activities. That is the current position and is consistent with not increasing the number of awards that apply to an employer.
- (d) The definition of 'horticulture industry' within the Exposure Draft includes a reference to 'agricultural holdings'. The meaning of this undefined term is not clear and is bound to lead to uncertainty and confusion, particularly in relation to the potential overlap between this Award and the Pastoral Industry Award.

9 Transitional arrangements

The Exposure Draft includes transitional arrangements for various employee benefits under existing NAPSAs including redundancy, accident pay and district allowances.

HAC submits that similar transitional arrangements should apply in respect of the increased costs to employers. In other words, a consistent approach should be taken so that employees retain their entitlements and employers are able to keep their costs down for a transitional period. Even the Commission accepted the need for reciprocal transitional provisions when it stated that:

*'Transitional provisions must be developed, that, in a practical way, take account of the intention of the consolidated request that modern awards not disadvantage employees or increase costs for employers.'*²⁵

For example, if the Commission's draft provisions with regard to the casual loading, piece rate provisions for casuals and hours of work are to be retained, transitional provisions should be introduced which alleviate costs for employers by delaying the impact of these increases for the longest time possible.

HAC acknowledges that transitional provisions may be dealt with at a later stage and will provide suggested drafting of appropriate clauses at that time.

10 Jury service

Clause 27.2 of the Exposure Draft provides for reimbursement for jury service on an unlimited basis.

²⁰ See clause 3.1 of the HAC/NFF Draft Award dated 10 December 2008.

²¹ See clause 3.1 of the AWU Draft Award dated 10 December 2008.

²² See clause 4.2 of the HAC/NFF Draft Award dated 10 December 2008.

²³ See clause 4.3 of the AWU Draft Award dated 10 December 2008.

²⁴ See section 5.2(c) of HAC's submissions dated 10 December 2008 section 3.1(c) of HAC's submissions dated 24 November 2008.

²⁵ See paragraph 106 of the Commission's decision dated 19 December 2008.

However, in its decision dated 19 December 2008, the Commission clearly stated that it would not provide for an unlimited entitlement to paid jury service leave in modern awards as this would be inconsistent with the NES and would 'tend to undermine it'.²⁶

The approach taken by the Commission in clause 27.2 appears inconsistent with this stated intention and, in HAC's submission, should be amended accordingly.

11 Superannuation

Clause 21.5 of the Exposure Draft provides for the payment of superannuation contributions during periods of paid leave or whilst an employee is absent from work due to a work-related injury or illness.

However, in its decision dated 19 December 2008, the Commission clearly stated that it was not its intention that this type of a provision be included as part of the standard clause, but that this may be appropriate where necessary to maintain the pre-existing safety net.²⁷

This entitlement does not currently form part of the safety net for the horticulture industry. Accordingly, the approach taken by the Commission in clause 21.5 is clearly inconsistent with its stated intention and, in HAC's submission, should be amended accordingly.

HAC also repeats its position that the award should not specify which superannuation funds should apply in the event that an employee does not choose one.

²⁶ See paragraphs 103 and 104 of the Commission's decision dated 19 December 2008.

²⁷ See paragraph 92 of the Commission's decision dated 19 December 2008.

Schedule 1 – Case study example regarding piece rates

Schedule 2 – Case studies and examples regarding hours of work

CASE STUDY – LOCKYER VALLEY GROWER

This case study and accompanying spreadsheet seeks to provide the AIRC with ‘real life’ examples of the impact of the Exposure Draft of the Horticulture Industry Award (**HIA**), if it comes into force in its current form, on a fruit and vegetable grower in the Lockyer Valley in relation to the current Fruit and Vegetable Growing Industry Award 2002 (operating as a NAPSA) (**F&V**).

The Ministerial request requires that the Award Modernisation process neither disadvantage employees nor increase costs to employers. This information clearly illustrates the significant increase to costs that Queensland horticulture growers will incur on account of the combination of:

- A 2% increase to the casual loading (from 23% to 25%);
- The introduction of weekend penalty rates (which don't currently exist);
- The introduction of the five-level classification structure and higher pay rates.

Produce: Figs, Persimmons, Kiwi Fruit, Avocados, Stone Fruit

Harvest Periods (and when harvested):

Figs: January – May (*every tree every day*)

Persimmons: March – early May (*every tree every 2nd day*)

Kiwi Fruit: March – April (Easter) (*1 pass harvest*)

Avocados: August (*1 pass harvest*)

Stone Fruit: September – October (*every tree every 2nd day*)

Land under cultivation: 30 Hectares

Dispatch to markets: Every day except Saturday

Permanent employees: 3 (including office)

Casual employees Number of employees will vary depending on crop and harvest.

Peak approx 40-50 depending on harvest

Non-Peak 5-15 (pruning, planting etc)

Leading Hands: 2 Managers

2 Leading Hands

Ordinary Hours:

Peak: 38 – Any 5 days out of 7. All employees entitled to 2 days off in 7, so five day rotating roster.

Non-peak: up to max 38 hours per week dependent on availability of work

Overtime:

Peak Dependent on harvest quality/quantity and availability of staff – prefer and plan not to work overtime due to costs and limited capacity to pass those costs on in a price-taking environment

Non-Peak Rarely required

Public Holidays: January – Australia Day – figs harvested

March/April – Easter – Kiwi Fruit harvested

March-May – Easter/Labour & Anzac Days – persimmons harvested.

COST OF CONVERSION FROM CURRENT CASUAL RATE TO NEW 5-LEVEL CLASSIFICATION-BASED CASUAL RATES [INCLUDING 25% CASUAL LOADING]

Casual Classification	Current Casual Rate	New Classification Rate	Difference Hourly	Weekly Increase [38 hours]
Level 1 Farmhand	17.60	17.89	.29	11.02
Level 2	17.60	18.44	.84	31.92
Level 3	17.60	18.99	1.39	52.82
Level 4	17.60	19.74	2.14	81.32
Level 5	17.60	20.98	3.38	128.44

NOTE: This grower employs up to 50 casual staff in peak harvest season. At a minimum, an increase to the casual loading of 2% (from 23% to 25%) equals an increase of \$11.02 per week per Level 1 employee. Assuming 50 Level 1 casual employees, this will increase to the employer’s weekly wage bill by **\$551.00**. However, a number of these employees would necessarily be classified at Level 2 or above, making the increase even higher.

COST OF CONVERSION TO NEW SATURDAY AND SUNDAY PENALTY RATES

[INCLUDES 25% CASUAL LOADING]

[ASSUMES SAT/SUN WORK AS PART OF ORDINARY HOURS]

1 EMPLOYEE / 1 HOUR

Award	Mon – Fri	Increase	Saturday	Increase	Sunday	Increase
F&V	17.60		17.60		17.60	
HIA	17.89	.39	22.36	4.76	26.84	9.24

FRUIT AND VEGETABLE GROWING INDUSTRY AWARD - Previous Award

Employee	Perm Cas	Pay Level	Pay Rate	Mon to Fri	Saturday	Sunday	TOTAL HOURS	Normal	Costs		TOTAL COST
									Overtime 150%	Overtime 200%	
1	C	Farmhand	\$17.60	16.00	10.00	8.00	34.00	598.40	0.00	0.00	598.40
2	C	Farmhand	\$17.60	30.00	5.00	4.00	39.00	668.80	26.40	0.00	695.20
3	C	Farmhand	\$17.60	38.00	10.00		48.00	668.80	79.20	246.40	994.40
4	C	Farmhand	\$17.60	22.00		8.00	30.00	528.00	0.00	0.00	528.00
5	C	Farmhand	\$17.60	33.00	8.00		41.00	668.80	79.20	0.00	748.00
6	C	Farmhand	\$17.60	36.00		4.00	40.00	668.80	52.80	0.00	721.60
7	C	Farmhand	\$17.60	43.00	5.00		48.00	668.80	79.20	246.40	994.40
8	C	Farmhand	\$17.60	44.00	5.00		49.00	668.80	79.20	281.60	1029.60
9	C	Farmhand	\$17.60	19.00	10.00	8.00	37.00	651.20	0.00	0.00	651.20
10	C	Farmhand	\$17.60	12.00	10.00	8.00	30.00	528.00	0.00	0.00	528.00
11	C	Farmhand	\$17.60	11.00	10.00	8.00	29.00	510.40	0.00	0.00	510.40
12	C	Farmhand	\$17.60	23.00	10.50	6.00	39.50	668.80	39.60	0.00	708.40
13	C	Farmhand	\$17.60	36.00		6.00	42.00	668.80	79.20	35.20	783.20
14	C	Farmhand	\$17.60	41.00	8.00		49.00	668.80	79.20	281.60	1029.60
15	C	Farmhand	\$17.60	19.00	12.00	8.00	39.00	668.80	26.40	0.00	695.20
16	C	Farmhand	\$17.60	33.00		4.00	37.00	651.20	0.00	0.00	651.20
17	C	Farmhand	\$17.60	38.00	8.00		46.00	668.80	79.20	176.00	924.00
18	C	Farmhand	\$17.60	21.00	12.00	4.00	37.00	651.20	0.00	0.00	651.20
19	C	Farmhand	\$17.60	25.00		4.00	29.00	510.40	0.00	0.00	510.40
20	C	Farmhand	\$17.60	23.00	8.00	6.00	37.00	651.20	0.00	0.00	651.20
21	C	Farmhand	\$17.60	14.00	8.00	6.00	28.00	492.80	0.00	0.00	492.80
22	C	Farmhand	\$17.60	26.00	8.00	6.00	40.00	668.80	52.80	0.00	721.60
23	C	Farmhand	\$17.60	29.00	10.00		39.00	668.80	26.40	0.00	695.20
24	C	Farmhand	\$17.60	41.00		4.00	45.00	668.80	79.20	140.80	888.80
25	C	Farmhand	\$17.60	42.00	3.00	4.00	49.00	668.80	79.20	281.60	1029.60
26	C	Farmhand	\$17.60	36.00	3.00	6.00	45.00	668.80	79.20	140.80	888.80
27	C	Farmhand	\$17.60	15.00	12.00	6.00	33.00	580.80	0.00	0.00	580.80
28	C	Farmhand	\$17.60	19.00	10.00	8.00	37.00	651.20	0.00	0.00	651.20
29	C	Farmhand	\$17.60	31.00		6.00	37.00	651.20	0.00	0.00	651.20
30	C	Farmhand	\$17.60	33.00		4.00	37.00	651.20	0.00	0.00	651.20
31	C	Farmhand	\$17.60	19.00	10.00		29.00	510.40	0.00	0.00	510.40
32	C	Farmhand	\$17.60	21.00	10.00		31.00	545.60	0.00	0.00	545.60
33	C	Farmhand	\$17.60	35.00	6.00		41.00	668.80	79.20	0.00	748.00
34	C	Farmhand	\$17.60	18.00	10.00	8.00	36.00	633.60	0.00	0.00	633.60
35	C	Farmhand	\$17.60	23.00	5.00	6.00	34.00	598.40	0.00	0.00	598.40
36	C	Farmhand	\$17.60	30.00		6.00	36.00	633.60	0.00	0.00	633.60
37	C	Farmhand	\$17.60	35.00	6.00		41.00	668.80	79.20	0.00	748.00
38	C	Farmhand	\$17.60	33.00	6.00		39.00	668.80	26.40	0.00	695.20
39	C	Farmhand	\$17.60	20.00	9.00	8.00	37.00	651.20	0.00	0.00	651.20
40	C	Farmhand	\$17.60	13.00	10.00		23.00	404.80	0.00	0.00	404.80
41	C	Farmhand	\$17.60	35.00	6.00		41.00	668.80	79.20	0.00	748.00
42	C	Farmhand	\$17.60	38.00			38.00	668.80	0.00	0.00	668.80
43	C	Farmhand	\$17.60	15.00	10.00		25.00	440.00	0.00	0.00	440.00
44	P	Farmhand	\$14.31	42.25	10.50	6.00	58.75	543.78	64.40	508.01	1116.18
45	P	Farmhand	\$14.31	19.50	5.25		24.75	354.17	0.00	0.00	354.17
46	P	Farmhand	\$14.31	19.50	5.25	6.00	30.75	440.03	0.00	0.00	440.03
47	P	LeadHand A	\$18.48	42.25	10.50	8.00	60.75	702.24	83.16	729.96	1515.36
48	P	LeadHand B	\$19.36	40.00	8.00	8.00	56.00	735.68	62.58	580.80	1379.06
49	P	Manager	\$21.12	42.25	8.00		50.25	802.56	95.04	390.72	1288.32
				1389.75	321.00	192.00		30348.07	1585.58	4039.89	35973.53

Casual	Normal	150%	O'T =<3hrs	200%	O'T >3hrs	250%	P.H.
\$17.60							
\$26.40							
\$35.20							
\$44.00							
\$14.31							
\$21.47							
\$28.62							
\$35.78							
\$18.48							
\$27.72							
\$36.96							
\$46.20							
\$19.36							
\$20.86							
\$38.72							
\$48.40							
\$21.12							
\$31.68							
\$42.24							
\$52.80							

Wages: \$35,973.53
Super: \$3,237.62
Workers Comp: \$449.67
TOTAL \$39,660.81

HORTICULTURE INDUSTRY AWARD 2010

Employee	Perm Cas	Pay Level	Pay Rate	Costs							TOTAL COST
				Mon to Fri	Saturday	Sunday	TOTAL HOURS	Normal	Saturday	Sunday	
1	C	Farmhand	\$17.89	16.00	10.00	8.00	34.00	286.24	223.63	214.72	724.59
2	C	Farmhand	\$17.89	30.00	5.00	4.00	39.00	536.70	111.81	223.64	872.15
3	C	Farmhand	\$17.89	38.00	10.00		48.00	679.82	268.40	0.00	948.22
4	C	Farmhand	\$17.89	22.00		8.00	30.00	393.58	0.00	214.72	608.30
5	C	Farmhand	\$17.89	33.00	8.00		41.00	590.37	192.33	0.00	782.70
6	C	Farmhand	\$17.89	36.00		4.00	40.00	644.04	0.00	196.80	840.84
7	C	Farmhand	\$17.89	43.00	5.00		48.00	814.02	134.20	0.00	948.22
8	C	Farmhand	\$17.89	44.00	5.00		49.00	840.86	134.20	0.00	975.06
9	C	Farmhand	\$17.89	19.00	10.00	8.00	37.00	339.91	223.63	214.72	778.26
10	C	Farmhand	\$17.89	12.00	10.00	8.00	30.00	214.68	223.63	214.72	653.03
11	C	Farmhand	\$17.89	11.00	10.00	8.00	29.00	196.79	223.63	214.72	635.14
12	C	Farmhand	\$17.89	23.00	10.50	6.00	39.50	411.47	234.81	263.90	910.18
13	C	Farmhand	\$17.89	36.00		6.00	42.00	644.04	0.00	196.80	840.84
14	C	Farmhand	\$17.89	41.00	8.00		49.00	760.34	214.72	0.00	975.06
15	C	Farmhand	\$17.89	19.00	12.00	8.00	39.00	339.91	268.35	331.00	939.26
16	C	Farmhand	\$17.89	33.00		4.00	37.00	590.37	0.00	107.36	697.73
17	C	Farmhand	\$17.89	38.00	8.00		46.00	679.82	214.72	0.00	894.54
18	C	Farmhand	\$17.89	21.00	12.00	4.00	37.00	375.69	268.35	107.36	751.40
19	C	Farmhand	\$17.89	25.00		4.00	29.00	447.25	0.00	107.36	554.61
20	C	Farmhand	\$17.89	23.00	8.00	6.00	37.00	411.47	178.90	161.04	751.41
21	C	Farmhand	\$17.89	14.00	8.00	6.00	28.00	250.46	178.90	161.04	590.40
22	C	Farmhand	\$17.89	26.00	8.00	6.00	40.00	465.14	178.90	250.48	894.52
23	C	Farmhand	\$17.89	29.00	10.00		39.00	518.81	228.10	0.00	746.91
24	C	Farmhand	\$17.89	41.00		4.00	45.00	760.34	0.00	143.12	903.46
25	C	Farmhand	\$17.89	42.00	3.00	4.00	49.00	787.18	80.52	143.12	1010.82
26	C	Farmhand	\$17.89	36.00	3.00	6.00	45.00	644.04	71.57	214.68	930.29
27	C	Farmhand	\$17.89	15.00	12.00	6.00	33.00	268.35	268.35	161.04	697.74
28	C	Farmhand	\$17.89	19.00	10.00	8.00	37.00	339.91	223.63	214.72	778.26
29	C	Farmhand	\$17.89	31.00		6.00	37.00	554.59	0.00	161.04	715.63
30	C	Farmhand	\$17.89	33.00		4.00	37.00	590.37	0.00	107.36	697.73
31	C	Farmhand	\$17.89	19.00	10.00		29.00	339.91	223.63	0.00	563.54
32	C	Farmhand	\$17.89	21.00	10.00		31.00	375.69	223.63	0.00	599.32
33	C	Farmhand	\$17.89	35.00	6.00		41.00	626.15	147.61	0.00	773.76
34	C	Farmhand	\$17.89	18.00	10.00	8.00	36.00	322.02	223.63	214.72	760.37
35	C	Farmhand	\$17.89	23.00	5.00	6.00	34.00	411.47	111.81	161.04	684.32
36	C	Farmhand	\$17.89	30.00		6.00	36.00	536.70	0.00	161.04	697.74
37	C	Farmhand	\$17.89	35.00	6.00		41.00	626.15	147.61	0.00	773.76
38	C	Farmhand	\$17.89	33.00	6.00		39.00	590.37	138.65	0.00	729.02
39	C	Farmhand	\$17.89	20.00	9.00	8.00	37.00	357.80	201.26	214.72	773.78
40	C	Farmhand	\$17.89	13.00	10.00		23.00	232.57	223.63	0.00	456.20
41	C	Farmhand	\$17.89	35.00	6.00		41.00	626.15	147.61	0.00	773.76
42	C	Farmhand	\$17.89	38.00			38.00	679.82	0.00	0.00	679.82
43	C	Farmhand	\$17.89	15.00	10.00		25.00	268.35	223.63	0.00	491.98
44	P	Farmhand	\$14.31	42.25	10.50	6.00	58.75	635.01	225.38	171.72	1032.11
45	P	Farmhand	\$14.31	19.50	5.25		24.75	279.05	93.91	0.00	372.95
46	P	Farmhand	\$14.31	19.50	5.25	6.00	30.75	279.05	93.91	128.79	501.74
47	P	LeadHand A	\$14.75	42.25	10.50	8.00	60.75	654.53	232.31	236.00	1142.61
48	P	LeadHand B	\$15.19	40.00	8.00	8.00	56.00	622.79	182.28	243.04	1068.46
49	P	Manager	\$16.78	42.25	8.00		50.25	744.61	201.36	0.00	966.24
				1389.75	321.00	192.00		24584.74	7387.08	5856.53	37908.74

Casual	\$	\$17.89	Ordinary	
		\$22.36	125%	Sat ord
		\$26.84	150%	M-Sat O'time/Sun ord
		\$35.78	200%	Sun O'Time/P.H.
Permanent		\$14.31	Ordinary	
		\$17.89	125%	Sat ord
		\$21.47	150%	M-Sat O'time/Sun ord
		\$28.62	200%	Sun O'Time/P.H.
Leading Hand A		\$14.75	Ordinary	
		\$18.44	125%	Sat ord
		\$22.13	150%	M-Sat O'time/Sun ord
		\$29.50	200%	Sun O'Time/P.H.
Leading Hand B		\$15.19	Ordinary	
		\$18.99	125%	Sat ord
		\$22.79	150%	M-Sat O'time/Sun ord
		\$30.38	200%	Sun O'Time/P.H.
Manager		\$16.78	Ordinary+140%	Leading Hand Loading
		\$20.98	125%	Sat ord
		\$25.17	150%	M-Sat O'time/Sun ord
		\$33.56	200%	Sun O'Time/P.H.
Wages:				\$37,908.74
Super:				\$3,411.79
Workers Comp:				\$473.86
TOTAL				\$41,794.39
Comparative Costs (including on-costs)				
HIA 2010				\$41,794.39
NAPSA				\$39,660.81
Weekly increase				\$2,133.58

CASE STUDY – GRANITE BELT GROWER

This case study and accompanying spreadsheet seeks to provide the AIRC with 'real life' examples of the impact of the Exposure Draft of the Horticulture Industry Award (**HIA**), if comes into force in its current form, on a fruit and vegetable grower in the Granite Belt in relation to the current Fruit and Vegetable Growing Industry Award 2002 (operating as a NAPSA) (**F&V**).

The Ministerial request requires that the Award Modernisation process neither disadvantage employees nor increase costs to employers. This information clearly illustrates the significant increase to costs that Queensland horticulture growers will incur on account of the combination of:

- A 2% increase to the casual loading (from 23% to 25%);
- The introduction of weekend penalty rates (which don't currently exist);
- The introduction of the five-level classification structure and higher pay rates;
- The introduction of a four-tiered Leading Hand/Supervisory loading replacing the existing weekly loading

NOTE: This grower owns and operates a small family farm in the Granite Belt growing broccoli and lettuce. Broccoli and lettuce crops (like many) are susceptible to climatic changes, particularly heat. A warm night and/or a full moon can impact on peak harvest conditions and cooler weather may delay harvest. Lettuce is delicate produce, needing to be harvested in the cooler parts of the day in warmer weather. Both have peak quality harvest times which are reliant on the weather.

The business employs approx 5 people during non-peak season to keep up with planting, irrigation, weed and pest control etc, and up to 10 casual employees during peak harvest periods. At a minimum, an increase to the existing casual loading of 2%, taking it from 23% to 25%, equals an increase of \$11.02 per week per Level 1 employee. Assuming 10 Level 1 casual employees, this will increase to the employer's weekly wage bill by \$110.20. However, a number of these employees could be classified at Level 2 or above, making the increase even higher.

Produce: Broccoli, Lettuce

Harvest Periods: November – May (*every day*)

Land under cultivation: 50 Acres

Ship to markets: Every day (in peak period) otherwise, 6 days

Permanent employees: Nil

Casual employees

Peak	10
Non-Peak	5

Leading Hands: 1

Ordinary Hours:

Peak	38 hours per week. All employees entitled to 2 days off in 7.
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Overtime:

Peak	Entirely dependent on harvest conditions
Non-Peak	Rarely

Public Holidays:

January – Australia Day
 March/April – Easter
 May – Labour Day

**CONVERSION FROM CURRENT SINGLE BASE CASUAL RATE TO NEW CLASSIFICATION
 BASED RATES [THIS EMPLOYER]**

Casual Classification	Current	New rate	Hourly Difference	Weekly Difference
Level 1	17.60	17.89	0.29	11.02
Level 3	17.60	18.99	1.39	52.82

COST OF CONVERSION TO NEW SATURDAY AND SUNDAY PENALTY RATES

[INCLUDES 25% CASUAL LOADING]

[ASSUMES SAT/SUN WORK AS PART OF ORDINARY HOURS]

	Old Fruit & Vegetable Growing Award (incl LHA)	Current Paid Rate	HIA Level 3 @ 134% LHA	Difference Between paid rate and HIA
Mon - Fri	17.99	19.36	19.52	0.16
Saturday 125%	N/A 17.99	N/A 19.36	24.28	4.92
Sunday 150%	N/A 17.99	N/A 19.36	28.88	9.52

FRUIT AND VEGETABLE GROWING INDUSTRY AWARD - Previous Award

Employee	Perm Cas	Pay Level	Pay Rate	Mon to Fri	Saturday	Sunday	TOTAL HOURS	Normal	Costs		TOTAL COST
									Overtime 150%	Overtime 200%	
1	C	Farmhand	\$17.60	10.00	7.50	5.00	22.50	396.00	0.00	0.00	396.00
2	C	Farmhand	\$17.60	10.00	7.50	5.00	22.50	396.00	0.00	0.00	396.00
3	C	Farmhand	\$17.60	15.00	7.50		22.50	396.00	0.00	0.00	396.00
4	C	Farmhand	\$17.60	15.00	0.00	7.00	22.00	387.20	0.00	0.00	387.20
5	C	Farmhand	\$17.60	18.00	8.00	0.00	26.00	457.60	0.00	0.00	457.60
6	C	Farmhand	\$17.60	18.00	0.00	7.00	25.00	440.00	0.00	0.00	440.00
7	C	Farmhand	\$17.60	18.00	5.00	5.00	28.00	492.80	0.00	0.00	492.80
8	C	Farmhand	\$17.60	18.00	5.00	5.00	28.00	492.80	0.00	0.00	492.80
9	C	Farmhand	\$17.60	18.00	10.00	8.00	36.00	633.60	0.00	0.00	633.60
10	P	Leading Hand	\$19.36	30.00	7.00	5.00	42.00	735.68	62.58	38.72	836.98
				170.00	57.50	47.00	274.50	4827.68	62.58	38.72	4928.98

Casual

Ord \$17.60

O'T =<3hrs \$26.40 150%
O'T >3hrs \$35.20 200%
Pub Hol \$44.00 250%

Wages: \$4,928.98
Super: \$443.61
Workers Comp: \$61.61
TOTAL \$5,434.20

Permanent

Ord \$14.31

O'T =<3hrs \$21.47 150%
O'T >3hrs \$28.62 200%
Pub Hol \$35.78

Leading Hand B

Ord \$19.36

O'T =<3hrs \$20.86 150%
O'T >3hrs \$38.72 200%
Pub Hol \$48.40

HORTICULTURE INDUSTRY AWARD 2010

Employee	Perm Cas	Pay Level	Pay Rate	Costs							
				Mon to Fri	Saturday	Sunday	TOTAL HOURS	Normal	Saturday	Sunday	TOTAL COST
1	C	Farmhand	\$17.89	10.00	7.50	5.00	22.50	178.90	167.72	134.20	480.82
2	C	Farmhand	\$17.89	10.00	7.50	5.00	22.50	178.90	167.72	134.20	480.82
3	C	Farmhand	\$17.89	15.00	7.50		22.50	268.35	167.72	0.00	436.07
4	C	Farmhand	\$17.89	15.00	0.00	7.00	22.00	268.35	0.00	187.88	456.23
5	C	Farmhand	\$17.89	18.00	8.00	0.00	26.00	322.02	178.90	0.00	500.92
6	C	Farmhand	\$17.89	18.00	0.00	7.00	25.00	322.02	0.00	187.88	509.90
7	C	Farmhand	\$17.89	18.00	5.00	5.00	28.00	322.02	111.81	134.20	568.03
8	C	Farmhand	\$17.89	18.00	5.00	5.00	28.00	322.02	111.81	134.20	568.03
9	C	Farmhand	\$17.89	18.00	10.00	8.00	36.00	322.02	223.63	214.72	760.37
10	C	Leading Hand*	\$17.89	30.00	7.00	5.00	42.00	536.70	156.54	169.96	887.17
				170.00	57.50	47.00	274.50	3041.30	1285.84	1297.24	5648.35

Leading Hand* - Classification Level 3 with supervisory responsibility for 9 employees

Wages: \$5,648.35
 Super: \$508.35
 Workers Comp: \$70.60
TOTAL \$6,227.31

Comparative Costs [including on-costs]

HIA 2010 \$6,227.31
 NAPSA \$5,434.20
Weekly increase from old to new award \$793.11

Casual
 \$17.89 Ordinary
 \$22.36 125% Sat ord
 \$26.84 150% M-Sat O'T/Sun ord
 \$35.78 200% Sun OT/P.H.

Permanent
 \$14.31 Ordinary
 \$17.89 125% Sat ord
 \$21.47 150% M-Sat O'T/Sun ord
 \$28.62 200% Sun OT/P.H.

Casual Level 3
Leading Hand + LH Allowance 34%
 \$17.89 Ordinary
 \$22.36 125% Sat ord
 \$26.84 150% M-Sat O'T/Sun ord
 \$35.78 200% Sun OT/P.H.

Schedule 3 – Proposed clauses regarding pieceworkers and NES entitlements

Definitions

'pieceworker base rate of pay means the base rate of pay contained in this award for an employee of equivalent classification, level and engagement to a particular pieceworker (who is not them self a pieceworker).'

'pieceworker full rate of pay is the full rate of pay contained in this award for an employee of equivalent classification, level and engagement to a particular pieceworker (who is not them self a pieceworker).'

...

Notice for Pieceworkers

'For the purposes of the NES, the full rate of pay for a pieceworker is the pieceworker full rate of pay as defined in clause #.'

...

Pieceworkers and redundancy

'For the purposes of the NES, the base rate of pay for a pieceworker is the pieceworker base rate of pay as defined in clause #.'

...

Pieceworkers and annual leave

'For the purposes of the NES, the base rate of pay for a pieceworker is the pieceworker base rate of pay as defined in clause #.'

...

Pieceworkers and personal leave

'For the purposes of the NES, the base rate of pay for a pieceworker is the pieceworker base rate of pay as defined in clause #.'