



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

19 July 2017

Vice President Hatcher
Fair Work Commission
Level 10, Terrace Tower
80 William Street
EAST SYDNEY NSW 2011

Via Email: Chambers.Hatcher.VP@fwc.gov.au
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Dear Vice President

Re: AM2014/197 – Casual Employment: Wine Industry Award 2010- Draft Determination

In accordance with the Directions issued by Casual Employment and Part-time Employment Full Bench as part of Decision [2017] FWCFB 3541 on 5 July 2017 (the Decision), the South Australian Wine Industry Association (SAWIA) is filing a Draft Determination for the variation of the Wine Industry Award 2010 to give effect to the Decision regarding the minimum engagement for casual employees in the vineyard.

In drafting the Determination SAWIA has had particular regard to the following paragraph of the Decision:

[794] We consider that the identified problem would be better resolved by an adjustment to the minimum engagement provision which dealt with the specific situation at hand, appropriately balanced the interests of the employer and employees, and provided certainty as to the outcome. The variation would be to reduce the minimum engagement period from 4 hours to 2 hours in circumstances where a weather event not expected at the start of a pruning or harvesting shift prevents the completion of 4 hours' work.

Outline of Draft Determination

1. The amendment to Clause 13.3 seeks to clarify that the minimum engagement for casual employees is four hours, except where the lesser engagement of two hours applies.
2. The amendment seeks to give effect to the Decision of the Full Bench by the introduction of new text to clause 13.3. The additional wording in subclause 13.3(b) provides for minimum payment of at least two hours' work for casual employees performing work in the vineyard where specific weather circumstances prevent them from being usefully employed.
 - (a) The proposed subclause uses the term "*unexpected weather event*", consistent with the evidence referred to in the Decision at [791]. The definition of "unexpected weather event" incorporates climatic conditions addressed in inclement weather provisions of other Modern Awards with minor amendments to better reflect the nature of the industry.
 - (b) The subclause requires that the unexpected weather event results in a situation where it is not reasonable for the work to continue. This is consistent with the evidence referred to in the

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Decision at [791].

- (c) In accordance with the Decision at [794] the subclause seeks to balance the interests of employees and employers by requiring the employer notifying employees as to why work in the vineyard cannot continue and in a timely manner.

SAWIA submits that the Draft Determination is consistent with the Decision, provides a practical solution to address the genuine problem of unexpected weather events on vineyard work and the casual minimum engagement in a timely manner.

Next steps

We note that the Directions request any interested party to respond to SAWIA's Draft Determination by 2 August 2027. Depending on any submissions made SAWIA may seek further Directions to enable submissions to made in response. SAWIA may also seek a conference with a member of the Commission to clarify and resolve any outstanding matters if required.

Yours sincerely



SARAH HILLS
Business Services Manager

MA000090

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 year review of modern awards – Casual employment
(AM2014/197)

WINE INDUSTRY AWARD 2010

[MA000090]

Wine industry

A. Further to the decision issued on 5 July 2017 by the Fair Work Commission, the above award is varied as follows:

1. By deleting current clause 13.3 and inserting the following:

13.3 Minimum engagement

- (a) On each occasion a casual employee is required to attend work the employee must be paid for a minimum of four hours' work, except as set out in clause 13.3(b)
- (b) If a casual employee cannot be usefully employed in a vineyard because of the following circumstances:
- (i) An unexpected weather event (including rain, hail, snow or other precipitation, bushfire, extreme cold, high wind, severe dust storm and extreme high temperature); and
- (ii) It is not reasonable for vineyard work to continue in the circumstances either in the whole or a section of the vineyard; then
- (iii) The employer must communicate with the affected casual employees within a reasonable time of the weather event described in clause 13.3(b)(i):
- The effect of the weather event on the continuation of the vineyard work; and
 - That the circumstances prevent the completion of four hours' work.

Then the casual employee will be paid for the work performed on that occasion, provided that they must be paid for a minimum of two hours' work.