

OUR REF: M:WPMSWINE INDUSTRY AWARD\LETFWC12.DOC

11 August 2017

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

By email: [Chambers.Hatcher.VP@fwc.gov.au](mailto:Chambers.Hatcher.VP@fwc.gov.au)

Dear Vice President

**Re: AM2014/197 Casual Employment: Wine Industry Award 2010 – Submissions**

We refer to the above matter.

We write in regards to the Commission's direction that United Voice make submissions about the form of variation proposed by the South Australian Wine Industry Association in regards minimum engagement reduction for casual employees due to unexpected weather events.

We note the Commission described the variation as follows at 77:

*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.*

We submit that the SAWIA's draft determination seeks to go beyond both their submissions and the findings of the Commission. SAWIA seeks to reduce minimum engagement due to high or low temperatures. Temperatures were not the basis of submissions by SAWIA nor was it a matter considered by the Commission. For this reason we seek the removal of references to temperatures be removed from the draft clause.

Further SAWIA submit a draft determination permitting the reduction in minimum engagement where a casual employee cannot be *usefully* employed. However the accepted submissions and the subsequent findings were restricted to the discrete circumstance related to inclement weather. This was submitted as a matter of health and safety for employees. The notion of useful employment was the basis of the SAWIA's submissions in regards to cellar door work and was not accepted by the Commission. For this reason we submit the clause ought to apply where employees cannot be safely employed in vineyards.

The Commission's findings relate to harvesting and pruning shifts and therefore we seek this be specified in the clause in place of the broader term "vineyard work" which could encapsulate work beyond harvesting and pruning.

Finally United Voice seeks an additional clause requiring an employer to make consideration as to whether other duties can reasonably be provided to affected casual employees in the event of inclement weather. Plainly if an employer has other work to be done and staff at hand capable of doing such work it would be sensible and reasonable to have that work done by the affected employees. It is reasonable for that work to be prioritise to affected employees given the inconvenience and loss that will take otherwise occur if their hours of work are reduced.

We submit that the attached draft determination meets the objectives of the Commission's decision and achieves the desires balance between employer and employee interests.

***If you have any queries please contact Industrial Officer, Mary Sullivan on 8352 9330. Any correspondence to our office regarding this matter should be marked for the attention of Mary Sullivan.***

Yours faithfully



**DAVID DITROIA**  
Branch Secretary

MA000090

**FAIR WORK COMMISSION**

**DRAFT**

**DETERMINATION**

**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 safely employed to perform pruning and harvesting work in a vineyard because of the following circumstances:
  - (i) there is an unexpected and unforecast weather event including rain, hail, snow, bushfire and/or severe dust storm; and
  - (ii) there are no other duties for the affected casual employees to perform where it is reasonable to provide such duties; and
  - (iii) the employer has communicated with the affected casual employees as soon as reasonably practicable of the weather event described in clause 13.3(b)(i); and advised regarding:
  - (iv) the effect of the weather event on the continuation of the pruning and harvesting work; and
  - (v) the circumstances that prevent the completion of four hours' work; and
  - (vi) Whether other duties are reasonably available pursuant to clause 13.3(b)(ii).

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.