

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

25 September 2018

**Re: AM2017/56 Sugar Industry Award 2010**

## **BACKGROUND**

1. On 4 September 2018, Deputy President Asbury directed parties to file a document that indicates the parties' final consensus positions in relation to all claims in this matter.
2. The Deputy President additionally directed parties to file a draft determination for all agreed matters.
3. This submission of the Australian Workers' Union ('**AWU**') responds to those directions.

## **ATTACHMENTS**

4. Attached to these submissions is a draft determination that reflects all agreed matters arising out of the current content of the *Sugar Industry Award 2010* ('**Sugar Award**').
5. The issues that have arisen solely out of the content of the Exposure Draft are addressed in the below submissions only.

## **PARTIES**

6. The AWU confirms that the following parties have taken part in discussions for the purpose of resolving the identified issues in the Sugar Award:

- 6.1. The AWU;
- 6.2. The Australian Manufacturing Workers' Union ('**AMWU**');
- 6.3. The Electrical Trades Union ('**ETU**');
- 6.4. The National Farmers' Federation ('**NFF**');
- 6.5. Australian Industry Group ('**AIG**')
- 6.6. The Australian Sugar Milling Council ('**ASMC**'); and
- 6.7. Queensland Sugar Limited ('**QSL**').

## **FINAL CONSENSUS POSITIONS**

### **Item 6 – Coverage and Definition Clause Inconsistencies**

7. The final consensus position for this item between the parties is as per the terms of the AWU submission of 5 April 2018, which is reproduced below.
8. Notwithstanding that the proposal below does involve modest amendments to the coverage clause, the intent of all parties is that these amendments are purely for drafting purposes and current coverage of the award is not affected in any way.
9. The parties propose the following amendments (additional words in red):

#### **2. Definitions**

***bulk terminal operations** is defined at clause 4.2(e). The terms and conditions of bulk terminal operations employees are found at Part 6 of this Award.*

***distillery sector** is defined at clause 4.2(d). The terms and conditions of distillery sector employees are found at Part 5 of this Award.*

***field sector** is defined at clause 4.2(a). The terms and conditions of field sector employees are found at Part 4 of this Award.*

***milling sector** is defined at clause 4.2(b). The terms and conditions of milling sector employees are found at Part 5 of this Award.*

***refinery sector** is defined at clause 4.2(c). The terms and conditions of refinery sector employees are found at Part 5 of this Award.*

#### **4. Coverage**

**4.2** In this award **sugar industry** means the following:

**(a) field sector:** all sugar cane farming operations including the operations of contractors performing general farm work, cane harvesting and haul out work and farm management; cane testing; and pest, disease control, advisory and research operations of Cane Protection and Productivity Boards and the Bureau of Sugar Experiment Stations;

**(b) milling sector:** sugar milling including the following operations of the sugar miller: **operations of transporting and processing cane including** cane railway construction, maintenance, repair and operation; factory maintenance, repair and operation; raw sugar refining at a sugar mill; by-product manufacture and processing at a sugar mill; and packaging operations performed at a sugar mill;

**(c) refinery sector:** refining raw sugar at sugar refineries and those refineries' **own packaging and storage** operations;

**(d) distillery sector:** distilling **operations of** sugar by-products for industrial purposes and packaging work in a distilling operation directly linked to a sugar mill;

**(e) bulk terminal operations:** bulk (packed or loose) receipt, storage, outloading and ship loading at the industry's bulk terminals, including handling incidental commodities or material; and

**(f) the generation and/or transmission of power and/or steam that is ancillary or incidental to the employer's activities in clauses 4.2(b) to (d) (albeit that excess power may be sold into the grid).**

10. These proposed amendments are included in the draft determination attached to these submissions.

### **Item 11 – Facilitative Provisions**

11. The final consensus position for this item between the parties is as per the terms of the AWU submission of 3 May 2018, which is reproduced below.

12. The parties believe that the clauses in the following table are facilitative provisions and as such may be included in the facilitative provisions table at clause 6.2 of the Exposure Draft.

13. The parties believe that all cross-references in the table are correct.

<b>Clause</b>	<b>Provision</b>	<b>Agreement between an employer and:</b>
7.4(g)	Casual Conversion	An individual
7.4(j)	Casual conversion—period of employment	An individual or the majority of employees
11.2(d)(iv) and 11.3(e)(iv)	Rostered days off—substitution of days	An individual

11.2(d)(v) and 11.3(e)(v)	Rostered days off—banking of days	An individual
11.3(a)	Averaging of weekly ordinary hours – exceeds 28 days	The majority of employees
11.3(c)	Altering spread of hours	An individual or the majority of employees
12.1(d)	Rest breaks	The majority of employees
12.4(d)	Rest breaks	The majority of employees
19.1(c)	Payment of wages—frequency	The majority of employees
25.6	Time off instead of payment for overtime	An individual
25.7	Make-up time	An individual
26.1(b)	Averaging of weekly ordinary hours – shiftworkers – exceeds 28 days	The majority of employees
26.9(a)	Nominal crushing season – shiftwork – hours of work	The majority of employees
26.10(a)	Nominal slack season – shiftwork – reducing length of shift	The majority of employees
26.10(d)	Rostered day off	Unclear – but likely the majority of employees.
26.10(f)	Nominal slack season - shiftwork - Rostered days off - banking of days	The majority of employees

14. These proposed amendments are not included in the draft determination attached to these submissions as the table of facilitative provisions has been introduced into the Exposure Draft as part of the 2014 Review.

### **Item 13 – Seasonal Employment**

15. The final consensus position for this item between the parties is as per the terms of the AWU submission of 3 May 2018, which is reproduced below.

16. Insert clause 7.6 – Seasonal Employment:

#### **“7.6 Seasonal Employment**

**(a)** A seasonal employee is an employee engaged by the employer on a full-time or part-time basis, on or about the commencement of the crushing season, for the purpose of performing duties directly and

indirectly related to crushing season operations and whose duties are completed and employment terminated on or about the end of the mill's crushing season.”

17. Replace the current definition of 'seasonal employee' in clause 2 with the following:

“**seasonal employee** means an employee specifically engaged as a seasonal employee in accordance with clause 7.6. In addition, an employee who is not specifically engaged as a seasonal employee but is engaged after the first Monday in June in any one year and before the first Monday in June in the subsequent year will, for the purpose of a 38 hour week only, be deemed to be seasonal until the first Monday of June in that subsequent year.”

18. These proposed amendments are included in the draft determination attached to these submissions.

#### **Items 17 & 34 – Piecework Loading Calculation**

19. A consent position for this item has not been reached.
20. The AWU and the NFF have each filed submissions and submissions in reply outlining their respective positions on this matter. Both parties rely on their respective written submissions.
21. If required, both the AWU and the NFF will supplement these submissions at the Hearing listed for 16 October 2018.
22. The NFF has withdrawn its claim for a reduction to the piecework loading, which formed part of item 34.

#### **Item 42 – Apprentice Tool Allowance**

23. A consensus position on this matter has been reached between the AMWU, AIG, and the ASMC, and a draft determination outlining the agreed terms has been filed.

24. The ETU has proposed some amendments to the terms of the draft determination as filed.
25. As a draft determination concerning this matter has already been filed, the proposed amendments are not included in the draft determination attached to these submissions.

#### **Item 47 – Hot Work Allowance**

26. The final consensus position for this item between the parties is as per the terms of the AWU submissions of 5 April 2018 and 3 May 2018, which is reproduced below.

27. The following allowances are *not* payable in addition to the hot work allowance at 16.1(t) of the Exposure Draft:

- 27.1. 16.1(c) – Bagasse Bins
- 27.2. 16.1(d) – Boiler Cleaning—Engine Driver
- 27.3. 16.1(m) – Confined Spaces
- 27.4. 16.1(aa) – Repair Work; and
- 27.5. 16.1(dd) – Work in Rain.

28. Additionally, the exclusion in clause 16.1(t)(iv) of the Exposure Draft – which is clause 22.20(d) of the Sugar Award – should be amended in the following manner to increase clarity:

“(iv) This allowance will be instead of any other provision relating to hot work, unpleasant conditions, confined spaces repair work or dirty work, ~~provided that the rates for or wet work, hot or noxious gas fumes confined space and repair work in this award will not be paid in addition.~~”

29. These proposed amendments are included in the draft determination attached to these submissions.

#### **Item 50 – Schedule D.2**

30. The final consensus position for this item between the parties is as per the terms of the AWU submission of 5 April 2018, which is reproduced below.

31. The rates in the tables in Schedule D.2 of the Exposure Draft are not entirely accurate, as the rates under each column titled “100%” are based on a 38-hour divisor, and do not take into account that 36- and 40-hour divisors are used in the sugar industry.
32. Penalty rates are always calculated on the 38-hour divisor rate of pay. Therefore, all figures in the tables in Schedule D.2 are accurate *except* for the “100%” columns.
33. It is proposed that a note is inserted in each relevant table stating that the rates listed in the columns titled “100%” may not be applicable to all employees at all times, with a cross-reference to clause 15.3 of the Exposure Draft. The note should also address that the rates in the other columns are accurate for all employees, regardless of divisor.
34. These proposed amendments are not included in the draft determination attached to these submissions as this Schedule D has been introduced into the Exposure Draft as part of the 2014 Review.

#### **Item 62 – Schedule D**

35. This item has been withdrawn by the NFF.

#### **Item 63 – Schedule D.3.1**

36. The final consensus position for this item between the parties is as per the terms of the AWU submission of 5 April 2018, which is reproduced below.
37. The table at D.3.1 is both unclear and inaccurate regarding overtime rates.
38. For bulk terminal operation employees, *all hours* worked outside of in excess of ordinary hours attract a penalty rate of 200%. This entitlement is found at clause 25.3 of the Exposure Draft. The table at Schedule D.3.1 does not reflect this and should be amended accordingly.
39. The heading, “Monday to Friday” is incomplete, as the rates listed below are for *overtime* Monday to Friday.
40. The parties propose:
  - 40.1. the column titled “150%” is not applicable and must be deleted;

40.2. the headings “First 3 hours” and “After 3 hours” are not applicable and must be deleted; and

40.3. the heading “Monday to Friday” should read “Monday to Friday – overtime”.

41. These proposed amendments are not included in the draft determination attached to these submissions as this Schedule D has been introduced into the Exposure Draft as part of the 2014 Review.

**Item 64 – Schedule D.3.2**

42. The final consensus position for this item between the parties is as per the terms of the AWU submission of 5 April 2018, which is reproduced below.

43. The heading of this schedule should state that the rates in the table are for shiftworkers only, and the heading of the fourth column “Other than day shift” is confusing and does not accurately reflect the award provisions.

44. The parties propose:

44.1. the word “employees” in the heading of Schedule D.3.2 should be replaced with the word “shiftworkers”; and

44.2. the heading of the fourth column in the table, “Other than day shift” should be replaced with “Continuous afternoon or night shift or no rotation to day shift”.

45. These proposed amendments are not included in the draft determination attached to these submissions as this Schedule D has been introduced into the Exposure Draft as part of the 2014 Review.

**Item 64A – Schedule D.3.3**

46. This item has been withdrawn by the AWU.

**Item 64B – Schedule D.3.4**

47. The final consensus position for this item between the parties is as per the terms of the AWU submission of 5 April 2018, which is reproduced below.

48. The parties propose:



48.1. the column titled “175%” is not applicable and must be deleted;

48.2. the headings “First 3 hours” and “After 3 hours” are not applicable and must be deleted; and

48.3. the heading “Monday to Friday” should read “Monday to Friday – overtime”.

49. These proposed amendments are not included in the draft determination attached to these submissions as this Schedule D has been introduced into the Exposure Draft as part of the 2014 Review.

**Item 64C – Schedule D.3.5**

50. The final consensus position for this item between the parties is as per the terms of the AWU submission of 5 April 2018, which is reproduced below.

51. The heading “Other than day shift” in the fourth column is misleading and inaccurate.

52. The parties propose:

52.1. the heading of the fourth column in the table, “Other than day shift” should be replaced with “Continuous afternoon or night shift or no rotation to day shift”.

53. These amendments are not included in the draft determination attached to these submissions as this Schedule D has been introduced into the Exposure Draft as part of the 2014 Review.

Yours Faithfully,



Zachary Duncalfe  
**NATIONAL LEGAL OFFICER**  
**The Australian Workers' Union**

# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 – 4 Yearly Review of Modern Awards

## **Sugar Industry Award**

(AM2014/247)

### **SUGAR INDUSTRY AWARD 2010**

[MA000087]

DEPUTY PRESIDENT ASBURY

BRISBANE, XX XX 2018

A. Further to the decision and reasons for decision <<decision reference>> in <<file number>>, it is determined that pursuant to section 156(2)(b)(i) of the Fair Work Act 2009, the *Sugar Industry Award 2010* is varied as follows:

- [1] By deleting the definition of ‘bulk terminal operations’ that appears at clause 3 and replacing it with as follows:

*bulk terminal operations is defined at clause 4.2(e). The terms and conditions of bulk terminal operations employees are found at Part 6 of this Award.*

- [2] By deleting the definition of ‘distillery sector’ that appears at clause 3 and replacing it with as follows:

*distillery sector is defined at clause 4.2(d). The terms and conditions of distillery sector employees are found at Part 5 of this Award.*

- [3] By deleting the definition of ‘field sector’ that appears at clause 3 and replacing it with as follows:

*field sector is defined at clause 4.2(a). The terms and conditions of field sector employees are found at Part 4 of this Award.*

- [4] By deleting the definition of ‘milling sector’ that appears at clause 3 and replacing it with as follows:

*milling sector is defined at clause 4.2(b). The terms and conditions of milling sector employees are found at Part 5 of this Award.*

- [5] By deleting the definition of ‘refinery sector’ that appears at clause 3 and replacing it with as follows:

*refinery sector is defined at clause 4.2(c). The terms and conditions of refinery sector employees are found at Part 5 of this Award.*

- [6] By deleting the definition of ‘seasonal employee’ that appears at clause 3 and replacing it with as follows:

*seasonal employee means an employee specifically engaged as a seasonal employee in accordance with clause 11.5. In addition, an employee who is not specifically engaged as a seasonal employee but is engaged after the first Monday in June in any one year and before the first Monday in June the subsequent year will, for the purposes of a 38 hour week only, be deemed seasonal until the first Monday of June in that subsequent year.*

- [7] By deleting clause 4.2 and replacing it with as follows:

*4.2 In this award **sugar industry** means the following:*

*(a) **field sector:** all sugar cane farming operations including the operations of contractors performing general farm work, cane harvesting and haul out work and farm management; cane testing; and pest, disease control, advisory and research operations of Cane Protection and Productivity Boards and the Bureau of Sugar Experiment Stations;*

*[4.2(b) varied by PR516595 ppc 09Nov11]*

*(b) **milling sector:** sugar milling including the following operations of the sugar miller: operations of transporting and processing cane including cane railway construction, maintenance, repair and operation; factory maintenance, repair and operation; raw sugar refining at a sugar mill; by-product manufacture and processing at a sugar mill; and packaging operations performed at a sugar mill;*

*(c) **refinery sector:** refining raw sugar at sugar refineries and those refineries’ own packaging and storage operations;*

*(d) **distillery sector:** distilling operations of sugar by-products for industrial purposes and packaging work in a distilling operation directly linked to a sugar mill;*

*(e) **bulk terminal operations:** bulk (packed or loose) receipt, storage, outloading and ship loading at the industry’s bulk terminals, including handling incidental commodities or material; and*

*(f) the generation and/or transmission of power and/or steam that is ancillary or incidental to the employer’s activities in clauses 4.2(b) to (d) (albeit that excess power may be sold into the grid).*

- [8] By inserting the following as a new sub-clause 11.5:

**11.5 Seasonal Employment**

*(a) A seasonal employee is an employee engaged by the employer on a full-time*

*or part-time basis, on or about the commencement of the crushing season, for the purpose of performing duties directly and indirectly related to crushing season operations and whose duties are completed and employment terminated on or about the end of the mill's crushing season.*

[9] By renumbering the current sub-clause 11.5 as sub-clause 11.6.

[10] By deleting current paragraph 22.20(d) and replacing it with as follows:

*(d) This allowance will be instead of any other provision relating to hot work, unpleasant conditions, confined spaces repair work or dirty work, or wet work.*

B. This determination will operate on and from XX XX 2018.

DEPUTY PRESIDENT