

**IN THE FAIR WORK COMMISSION**

**Matter No. AM 2014/78**

**Fair Work Act 2009**

**s.156 – 4 yearly review of modern awards**

**Meat Industry Award 2010 (MA000059)**

**Submissions of**

**Australian Meat Industry Council**

**20 November 2015**

## INTRODUCTION

1. This submission by the Australian Meat Industry Council (AMIC) concerns the Meat Industry Award 2010 (MIA) and the Award stage of the 4 yearly review of modern awards – AM2014/78.
2. On 23 October 2015, the Full Bench published a decision concerning the next stage of the Review of Group 1C, 1D and 1E awards. MIA is part of the 1C Group.
3. The Full Bench provided various comments as to events that had occurred since the publication of the original Exposure Drafts for the groups back in October 2014.
4. Concerning the MIA the Full Bench stated that the revised Exposure Draft for the meat award would be generally based upon the AMIC draft uploaded on the FWC website on 29 January 2015. Uploaded and attached to that draft were 2 pages of explanation by AMIC.
5. It is to be noted that there was no comment by the Full Bench in the 23 October decision that any issue should be referred to other Full Benches for determination i.e. casual loading or penalties.
6. On 30 October 2015, FWC published a revised Exposure Draft titled Meat Industry Award 2015 (further revised 2 November). FWC asked parties to provide any feedback on the new draft by 20 November 2015.
7. AMIC provided various submissions subsequent to the publication of the original Exposure Draft in October 2014. These included:
  - Comments on the original Exposure draft (uploaded 27 October);
  - Detailed comments on Schedule B (pay tables) of the original Exposure draft (uploaded 21 November);
  - Detailed comments on the AMIC Exposure Draft following a conference before SDP Hamberger (uploaded 29 January);
  - Detailed responses to one union's comments on the revised AMIC Exposure Draft (uploaded 12 February, 6 March and 1 April).
8. We detailed these comments/submissions in 7 above as there may be a need to refer to them in these submissions.
9. Below we provide comments on the latest Exposure Draft. Because we are near the completion of the review (apart from Common Issues) some clauses need added scrutiny.

## **COMMENTS ON REVISED EXPOSURE DRAFT**

### **Clause 1 – Title and commencement**

10. Clauses 1.4 and 1.5 are identical. The latter needs to be deleted.

### **Clause 3 - Coverage**

11. The reference in 3.3(d) to 'Schedule F' should be 'Schedule H'.

12. In 3.3(f) the award year should be '2015' rather than '2010'.

### **Clause 5 – Facilitative provisions**

13. In the table in 5.2(a) the clause referenced as '*9.2(e) – Meal Breaks*' should be referenced as '*9.1(a) – Meal Breaks*'.

14. In table 5.2(a) there is a reference to 'Payment of Wages' which at the moment is found in 10.10(a). We put forward comments below that consideration should be given to re-positioning the clause. We deal with this issue in paragraphs 35 to 40.

15. In the table in 5.4(a) the clause referenced as '*9.2 – rest breaks – meat processing establishments only*' should more correctly be referenced as '*9.2(e) – rest breaks – meat processing establishments only*'. The facilitation is to be found in 9.2(e) not in the whole of 9.2.

### **Clause 6 – Types of employment**

16. In the AMIC Exposure Draft we inserted the word 'only' at the end of 6.8(k). The sub-clause relates to weekend rates for casuals. It was inserted for abundant caution namely, to make it absolutely clear that the casual loading did not apply to ordinary hours worked on weekends and that where casuals work ordinary hours on weekends it only attracted the weekend penalty only. This has been the situation since arbitrations back during the simplification process for the meat industry awards 1997 – 2001. AMIC explained all this in:

- Submissions uploaded 21 November 2014;

- At the conference before SDP Hamberger on 18 December 2014;
- In detailed submissions 12 February 2015, 6 March 2015 and 1 April 2015.

17. The word 'only' pertaining to the interrelationship of the casual loading and weekend penalties does not appear in MIA but did appear in all the pre-reform awards and these 3 pre-reform awards was solely the basis of the making of MIA as determined by the award modernisation Full Bench: see [2009]AIRC FB450 at 133.
18. The revised Exposure Draft does acknowledge that the casual loading does not apply to ordinary hours on weekends and that ordinary hours attract the weekend penalty only. There can be no doubt about this and, as stated in 16 above, we raise this simply for abundant caution. The Full Bench may not think it is necessary. All this has occurred because of the way the Exposure Drafts have been re-structured.
19. The next matter in Clause 6 concerns the possible re-positioning of the APPRENTICESHIP CONDITIONS. At the moment they appear in clause 10.5 of the revised Exposure draft. Clause 10 deals with **Wages and allowances** – not conditions. It does not provide for clarity that they now be included in clause 10. It is to be noted that APPRENTICESHIP CONDITIONS in some of the other modern awards appear in the TYPES OF EMPLOYMENT clause.
20. The APPRENTICESHIP CONDITIONS only commenced to operate 1 January 2015 following a Full Bench decision in file matter AM2014/192. They were not contained in the original Exposure Draft. The heading where they presently appear in MIA is **Classifications, minimum wages and related matters**.
21. It appears logical that clause 10.5 should now be moved into Clause 6 – Types of Employment. As stated, this is consistent with other awards that contain the standard apprenticeship conditions.
22. If this is accepted, there would be a new sub-clause '**6.10 – Apprenticeship conditions**'. This would necessitate referencing an additional category in 6.1 as '**(e) – apprentices**'. The word 'apprentices would need to be added to clause 6.2. As well, if the suggestion is accepted, clause referencing in APPRENTICESHIP CONDITIONS would need to be re-worked.

### **Clause 8 - Hours of work**

23. Words are missing from the headings to 8.3, 8.4 and 8.5 as agreed at the SDP Hamberger conference on 18 December. The words missing are 'and any ancillary products' and they should be inserted after the words '*meat products*' in each of the headings. They were inserted into the AMIC draft but appear to have been deleted in the revised Exposure draft.
24. An explanation as to why the words were needed appears in the AMIC summary document uplifted 29 January at paragraph (f). The suggested words are consistent with the words in 8.3(f) and 8.4(d) where they were added following the 18 December conference.
25. It is necessary to have them included in the headings.

### **Clause 9 - Breaks**

26. In 9.2(c) the correct reference should be 9.2(a) and not 9.2(b). The former is the clause that entitles a rest break not the latter.
27. In 9.2(d) we think the reference should be described as 'clause 9.2(a) and (b)'. The employees referred to in 9.2(d) are also referred to in 9.2(a) but are fully described in 9.2(b). Including both sub-clauses makes it clear.
28. Clause 9.2 was derived from the meat processing pre-reform award and the clause was the subject of an arbitrated decision by a Full Bench of the AIRC in about 2003.

### **Clause 10 – Minimum wages (under Part 4 – wages and allowances)**

29. Clause 10.3 relates to minimum rates of pay for apprentices. The clause is to be read in conjunction with new apprenticeship provisions presently found in clause 10.5 of the revised Exposure Draft. The standard conditions no longer cover training by **YEARS** but **STAGES**.
30. The first column in clause 10.3(a)(i) should read as follows:

<b>Stage of apprenticeship</b>	
Stage 1	
Stage 2	
Stage 3	
Stage 4	

31. The above suggested first column should be repeated in clause 10.3(a)(ii).
32. The words 'the first year' in 10.4(a) should be replaced with 'stage 1' and the single word 'year' after the word 'relevant' should be replaced with the word 'stage'.
33. For the same reasons the word 'years' in 10.4(b) should read 'stages' and the singular word 'year' after the word 'relevant' should read 'stage'.
34. Irrespective of the outcome of repositioning APPRENTICESHIP CONDITIONS as outlined in paragraphs 19 to 22 above, the present clause 10.9 contains some incorrect referencing. The reference in 10.9 (Stage 2) should read '10.5(o)' and not '21.3.15', the latter being the numbering in MIA. Similarly, the references in 10.9 (Stage 3) and 10.9 (Stage 4) should be '10.5(o)' and not '21.3.15'. The further references under the heading **Exit** for Stage 4 should be '10.5(e), 10.5(f), 10.5(g) and 10.5(o)' and not '21.3.5, 21.3.6, 21.3.7 and 21.3.15'.
35. The next clause for comment is Clause 10 relates to the present 10.10. This clause concerns '**Payment of wages**' and the clause applies to all who are covered by the varied award. It is sandwiched between the apprenticeship provisions and the clause referencing 'National training wage'. Even if our suggested moving of APPRENTICESHIP CONDITIONS to clause 6 occurs '**Payment of wages**' would be sandwiched between wages for 'Adult apprentices' and 'National training wage'.
36. Because 'Payment of wages' is a sub-clause of 10 it does not appear in the **Table of Contents**. Anyone attempting to find these payment provisions might conclude the award is silent. In MIA the Contents provides a reference to **Payment of wages** because it is a separate whole numbered clause. We note in some other awards that **Payment of wages** is a distinct numbered clause under the Part headed **WAGES AND ALLOWANCES** and hence it appears in the **Contents** table in those awards. All pre-reform meat industry awards contained a separate distinct numbered clause which were found in CONTENTS.
37. Following on from the above, there are two alternatives.
38. The first and easiest solution (though not the clearest) is to place the sub-clause **Payment of wages** as the last sub-clause in the Part. At least it would not be sandwiched.
39. The second alternative is to give it a distinct clause number in the Part so that it appears in the Contents. This would necessitate a careful check and renumbering of clause references throughout the award. AMIC's preference is this alternative.

40. Whichever alternative is agreed would require renumbering of the present clauses 10.11, 10.12 and 10.13.

### **Clause 13 – Relieving inspection duties**

41. At the end of 13.1 it should read for completeness ‘...A3.6 of Schedule A.’

### **Clause 16 - Shiftwork**

42. In clause 16.3 (e) we question why the example is necessary considering the complete picture is to be found in the pay tables.

43. Per the revised Exposure Draft the correct reference in 16.3(f) should be ‘17.4’ and not ‘17.2(b)’.

44. The next matter concerns **16.5 – altering starting times**. We think words need to be added to the clause.

45. We explain this by way example. At the SDP Hamberger conference on 18 December 2014 it was agreed that words would be added to clause 8.7 i.e. *‘Consultation obligations about changes to rosters or hours of work are contained in clause 27.2’*. This was because clause 8.7 deals with altering starting and finishing times and is subject to consultation.

46. In the AMIC Exposure Draft these same words were included in clause 16.5 as it deals with the subject of altering starting hours for shifts. AMIC explained this in the document uploaded 29 January. However, it appears they have been deleted from the revised Exposure Draft.

47. We think the words already added to 8.7 are necessary for 16.5 and should be added.

### **Clause 17 – Penalty rates**

48. Words are missing from the headings in 17.1, 17.2 and 17.3. They are the same missing words discussed in paragraphs 23 to 25 above when we provided comments for clause 8. For the reasons given therein they should be included in the headings to 17.1, 17.2 and 17.3.

## Clause 19 – Annual leave

49. Turning to 19.4 there are two minor corrections. First, the reference in (b)(i) should read 'clause 11' and not simply the number '11'. Second, the end bracket is missing at the end of (b)(iii).

50. In 19.5(a) the calculation should be on the employee's '**minimum** rate of pay' and not merely 'rate of pay'. This is consistent with 37.4(a) of MIA.

## Clause 28 – dispute resolution

51. The last full paragraph in 28.5 should be numbered 28.6. This is consistent with clause 10 of MIA.

## Schedule B – Summary of Hourly Rates of Pay

52. It might be convenient and clearer if we present our comments on Schedule B in point form with sub-headings:

### Ordinary/minimum

- (i) In decisions December 2014 and July 2015 the Full Bench dealt with the rationale behind including the term 'ordinary hourly rate' in contrast to 'minimum hourly rate' for the awards under review: see [2014] FWCFB 9412 and [2015] FWCFB 4658;
- (ii) These decisions were published after the AMIC Exposure Draft from the SDP Hamberger conference was circulated;
- (iii) As MIA and the revised Exposure Draft contain no allowances or loadings that are payable as 'all purpose' rates the revised Exposure Draft has been re-drafted to include 'minimum' rather than "ordinary' where applicable;
- (iv) In Schedule B many of the headings to the tables contain the word 'ordinary' – tables B1.1, B1.3, B2.1, B2.3, B3.1, B3.3, B4.1, B4.3, B5.1 and B5.3;
- (v) Leaving aside for the moment the suggestion below that some of the tables can be deleted for simplicity reasons, the term '**ordinary**' should be deleted from the headings



of each of these tables and replaced with the words '**minimum hourly**' so as to provide for consistency with the main body of the award. Otherwise it is confusing;

#### **Tables B.1.1 to B.1.4**

- (vi) Table B.1.1 deals the minimum hourly rates for F/T and P/T employees working ordinary hours. Presently, Table B.1.3 deals with the same subject for casuals working ordinary hours. Logically, this table B.1.3 should appear before the overtime table. In other words B.1.2 becomes B.1.3 and B.1.3 becomes B.1.2;

*(Note: the revised Exposure Draft in the present table B.1.3 contains the correct percentages for casuals working ordinary hours in line with the AMIC Exposure Draft and as outlined in all the submissions referred to in paragraph 7 of these submissions. Casuals working ordinary hours receive the appropriate penalty in lieu of the loading)*

- (vii) The next comment concerns the relationship between the presently numbered tables B.1.2 and B.1.4. There is an argument for abolishing table B.1.4 which provides for overtime rates for casuals and including casuals in the heading of table B.1.2. The minimum overtime rates are the same for all employees including casuals: *see clause 6.8(i) of the revised Exposure Draft and clause 15.11 of MIA*. Table B.1.4 is not necessary. It should be deleted. The re-drafted heading for the presently numbered B.1.2 would read '**Full-time, part-time and casual adult employees – overtime rates**';

#### **Tables B.2.1 to B.2.4**

- (viii) The comments here are much the same as for B.1.1 to B.1.4 above;
- (ix) If accepted, B.2.2 and B.2.3 would swap positions and be re-numbered. B.2.4 would be abolished and the heading to the present B.2.2 would be as outlined in (vii) above;

#### **Tables B.3.1 to B.3.3**

- (x) These tables concern meat retail establishments as defined;

- (xi) B.3.2 and B.3.3 would swap positions for the reasons given in (vii) and (ix) above;
- (xii) In the case of the B.3 tables there is no separate table expressing minimum hourly overtime rates for casuals and we agree with this. As a consequence, the heading to the present B.3.2 should read '**Full-time, part-time and casual adult employees – overtime rates**'. This is consistent with (vii) and (ix) above;
- (xiii) One final matter for the tables in B.3 concerns the last column of the presently numbered tables B.3.1 and B.3.3 that deal with the same subject matter. The correct times should be '**10pm to 6am**' not '**10am to 6am**': see clause 31.2(i)(iii) of MIA – Load out areas;

#### Table B.4.1 to B.4.3

- (xiv) For the reasons given in (vii), (ix) and (xi) above, B.4.2 and B.4.3 would swap positions;
- (xv) For the similar reasons given in (xii) above, the heading in the presently numbered B.4.2 should read '**Full-time, part-time and casual adult employees – overtime rates**';

#### Tables B.5.1 to B.5.3

- (xvi) For the reasons given in (vii), (ix), (xi) and (xiv) above, B.5.2 and B.5.3 would swap positions;
- (xvii) The heading to the presently numbered B.5.2 should read '**Full-time, part-time and casual adult employees.....**'. In other words, the word 'casual' is placed incorrectly as it should be before the word 'adult';

#### Tables B.6 – Public holidays

- (xviii) We note that table B.6.2 has been deleted in accordance with the Full Bench substantive issues decision: 2015 [FWCFB] 579 at 5-8;

- (xix) We also note that the revised Exposure Draft in table B.6.2 now contain the correct rates for casuals working public holidays as detailed in AMIC documents referred to the earlier in paragraph 7 namely:
- Comments on the original Exposure draft (uploaded 27 October);
  - Detailed comments on Schedule B (pay tables) of the original Exposure draft (uploaded 21 November);
  - Detailed comments on the AMIC Exposure Draft following a conference before SDP Hamberger (uploaded 29 January);
  - Detailed responses to one union's comments on the revised AMIC Exposure Draft (uploaded 12 February, 6 March and 1 April).
- (xx) These submissions are supported by the Full Bench decision referred to in (xviii) above;

### **Daily hire rates**

53. At the start of Schedule B the question remains per the original Exposure Draft about including Daily Hire rates. For the reasons given in earlier submissions by AMIC we are against this suggestion: see AMIC submissions uplifted 27 October 2014 and 21 November 2014.

### **Table C.2**

54. For completeness, we simply note that the figure \$19.64 is the 2014 figure and is presently \$20.13.

### **Schedule H - Definitions**

55. The one final subject concerns Schedule H.

56. As implied in 52(i) to (v) above, there was consensus at the SDP Hamberger conference on 18 December about re-introducing the term 'ordinary hourly rate' back in the draft. The reason was because for the period 2000 to present the term 'ordinary hourly rate' (and related terms) were precisely defined in the relevant per-reform awards and MIA such that wherever the

terms appeared in the body of the award one referred to the definition. The return of the term 'ordinary hourly rate' is no longer possible.

57. However, in many of the other revised Exposure Drafts, there are definitions of either 'ordinary hourly rate' or minimum hourly rate' in the Definitions Schedules. This should occur in the meat industry award.

58. In the AMIC Exposure Draft, we included H2 to Schedule H. it was deleted from the revised document because 'ordinary hourly rate' was deemed irrelevant. We now ask that the following be inserted into H2:

**'Minimum hourly rate** means for all purposes of the award, except where otherwise expressly provided, the minimum weekly rate prescribed in clause 10.1 for the classification of the employee divided by 38'.

59. MIA has the following definition:

**'Ordinary hourly rate for overtime and other purposes**

For all purposes of the award, except where otherwise provided:

(a) **ordinary hourly rate** means the award rate of pay per week prescribed in clause 19.1 for the classification of the employee, divided by 38...'

60. Some other modern awards, as discussed in the Full Bench decisions referred to in paragraph 53(i) above, have 'ordinary hourly rate' as including allowances and loading for all purposes. At least since 2000 following the arbitrations that simplified the meat industry pre-reform awards it was the reverse. Wherever the 'ordinary hourly rate' appeared in the awards it was simply the minimum classification rate divided by 38 – nothing more.

61. The proposed definition outlined in 58 above needs to be inserted. Otherwise, minimum hourly rate appears in the document without an accompanying definition.

Australian Meat Industry Council

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