

Four Yearly Modern Award Review

AM 2014/ 200

Exposure Draft – Aquaculture Industry Award 2015

**Submission by: Austuna – Bluefin Tuna Industry Association
Tassal Operations Pty Ltd**

**Contact: Frank McMahon
fcmahon@bigpond.net.au**

To: AMOD
From: Austuna, Bluefin Tuna Industry Association, Tassal Operations Pty Ltd
Reference: AM2014/200
Subject: Aquaculture Industry Award 2014 – Initial Comments on the Exposure Draft

1.0 Introduction

- 1.1 The response is provided as far as possible in the same order as the clauses are presented in the Exposure Draft. This submission is referred to as an ‘initial response’ as we are uncertain as to whether we have identified all of the changes which have been made and the impact of these changes on operations.
- 1.2 We have identified a number of errors /omissions of which we are unsure as to their intent ie whether they are unintentional omissions or deliberate changes. In any event we have tried to generally retain the intention of the current award except in respect to matters previously advised.
 - (a) Clause 15.4 - Travel Time and Allowances - Exposure Draft 11.3 (d)
 - (b) Clause 19.5 (b) – Methods of arranging ordinary hours (Exposure Draft 8.4 (e)
 - (c) Schedule (B) –Tuna Industry issues with the classification structure
- 1.3 The Tuna industry until 2010 was award Free. The industry has never previously worked under any restrictions in respect to arranging the hours of work (other than Workplace Health and Safety Policies) for what is a very short but extremely tight season. Some amendments were proposed in the 2012 review and agreed to in part, but they have not delivered the outcomes sought by the industry.
- 1.4 Further variations are being proposed in respect to the matters listed in 1.2 (above) which would in essence provide the ability for individual agreement (in addition to majority agreement) in relation to travel time not counting as working time, and, work cycles being extended by up to 26 weeks.
- 1.5 In regard to the issues relating to the current classification structure, the industry seeks to introduce a new stream.
 - The Tuna Ranching Stream
- 1.6 These matters are under discussion between the parties and will continue over the next few weeks.
- 1.7 The parties have agreed to investigate further the matter of other classification requirements (eg marine vegetation).

2.0 Initial Comments

- 2.1 Schedule H – Definitions – Supported
- 2.2 Clause 5 – Facilitative Provisions
 - (a) Inclusion is supported
 - (b) Consistent with the changes previously proposed by Austuna and Tassal relating to ‘individual agreement’ being included and a number of errors and omissions , the table should read in respect to these matters as follows :-

Clause	Provision	Agreement Between an employer and:
8.3 (c) Continuous Shiftworkers (extended work periods)	Rostering	(1) The Majority of the employees in the work place or (2) A section or sections of the work place (3) An individual employee
8.4 (c) (ii)	Methods of arranging ordinary working hours	(1) The Majority of the employees in the work place or (2) A section or sections of the work place (3) An individual employee
Note: The current award provides for facilitative provisions which have been omitted from the Exposure Draft 19.3 Continuous Shiftworkers 19.4 Non Continuous Shiftworkers 19.5 Day workers. These provisions will need to be retained in the new agreement to distinguish between continuous and non continuous shiftworkers in clauses 8.2 and 8.3 which will need to be corrected.		(1) The Majority of the employees in the work place or (2) A section or sections of the work place (3) An individual employee
11.3 (d) (ii)	Travel Time and Allowance (travel time not to count as part of daily working time)	(1) The Majority of the employees in the work place or (2) A section or sections of the work place (3) An individual employee
Note: There are consequential changes required to clauses 8.3 ©, 8.4 ©, a new 8.5 (c) and a variation to 11.3 (d) (ii).		

2.4 Clause 10 – Minimum Wages

The inclusion of weekly, hourly and casual rates is supported.

2.5 Clause 11 – Allowances (generally)

The inclusion of monetary amounts for allowances is also supported.

2.6 Clause 11.3 (d)
(i) Is supported

Amendment Sought to Clause 11.3 (d) (ii)

(ii) When a tuna farm is located away from the shore so that some means of transport is necessary for an employee to pass between the shore and the tuna farm , before starting and after finishing work , the employee will be paid at ordinary rates of pay for the time:

- Spent Travelling before starting and/or after finishing work OR
- Necessarily waiting for the means of transport :

but shall not count as part of daily working time where agreement is reached between the employer and:

- (a) The majority of employees in the workplace ;
- (b) A section or sections of it; or
- (c) An individual employee

Such agreements are to be recorded in the time and wages records

(iii) unchanged

(iv) If at any time during the journey from the shore to the tuna farm an employee is required to engage in work tasks all such time shall count as time worked

(v) unchanged

(vi) unchanged

2.7 Clause 10.6 - Payment of Wages

Three working days seems more reasonable in respect to provision of pay slips to casual employees on termination of engagement.

2.8 Clause 8.3(c) - Rostering

(i) unchanged

(ii) The majority of the employees in the workplace, or a section or sections of it, or the employer and an individual employee may agree to extend the 12 week work period up to 26 weeks provided the daily maximum does not exceed 10 hours.

(iii) unchanged.

2.9 Clause 8.4 - Methods of arranging ordinary working hours

(a) unchanged

(b) unchanged

(c) The matters on which agreement may be reached include

(i) Unchanged

- (ii) The length of the work cycle for day workers provided that the length is not longer than 12 weeks. The 12 week period may be extended to 26 weeks provided that the daily ordinary hours will be a maximum of 10 ordinary hours and provided that the majority of the employees in the section or sections concerned agree or an individual employee agrees.
- (iii) Unchanged
- (iv) Unchanged
- (v) Unchanged
- (vi) Unchanged
- (vii) Unchanged

2.10 Clause 9.2 Paid Meal Breaks

Not supported (see 19.3 (b) in existing). Paid meal breaks should only be paid for Continuous shiftworkers (as defined), consistent with most other awards (See Food Processing, Manufacturing and Associated industries Award etc).

2.11 Clause 14 Overtime

The applicants support the existing wording. The exposure draft wording implies that these may be read as stand alone sub clauses. The existing wording makes it clear that the requirements must be read together and consequently an employee on a 12 week or 26 week cycle will only be entitled to overtime when they exceed the average of 38 hours over that period or exceed 10 hours in a day.

3.0 Conclusion

We note that Section B – Summary of Hourly rates has not been reproduced. In light of the comments from other parties to other Awards we would like to receive the FWC proposal as soon as practicable.