

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

16 April 2018

Re: AM2014/247 Sugar Industry Award 2010

BACKGROUND

1. The Full Bench of the Fair Work Commission ('**FWC**') published the *4 yearly review of modern awards – Award stage – Group 3 (AM2014/223 and others) Decision*¹ ('**Decision**') on 13 March 2018. The Decision further considered the proposed variations to the *Sugar Industry Award 2010* ('**Award**').
2. The Full Bench has invited parties to file submissions on various matters.
3. The submissions of The Australian Workers' Union ('**AWU**') are below.

DRAFTING AND TECHNICAL ISSUES

Item 11 – Facilitative Provisions

4. In a submission dated 5 April 2018², the AWU presented a table that contained a list of provisions that all parties have agreed are facilitative in nature and as such, may be included in the table in clause 6 of the Exposure Draft for the *Sugar Industry Award 2010* ('**Exposure Draft**').
5. The AWU continues to support that list. However, the AWU notes that the clause *numbers* of three of the provisions listed in that table are incorrect, which may be

¹ [2018] FWCFB 1405

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014247-corr-awu-050418.pdf>

due to a number of factors. As such, the AWU takes this opportunity to clarify the following:

- 5.1. The reference to clause '11.3(c)(iv)' should read '11.3(e)(iv)';
 - 5.2. The reference to clause '11.3(c)(v)' should read '11.3(e)(v)'; and
 - 5.3. The reference to clause '12.1(e)' should read '12.1(d)'.
6. As for comment on the current table at clause 6 of the Exposure Draft, the AWU notes that the reference to clause '11.3(b)(iii)' in that table should read '11.3(c)'.

Item 21 – Overtime and Penalty Rates

7. The AWU notes that we have previously provided brief responses to a number of the questions listed at paragraph [199] in the Decision at paragraphs 17 to 21 of the AWU submission dated 28 November 2017³. The responses below reinforce and further develop those previous responses.
8. There are no interaction issues between proposed clause 26.4 and clause 26.3(b) of the Exposure Draft. Clause 26.3(b) provides the ordinary hours of work for continuous shiftworkers, and proposed clause 26.4 provides for a loading to be paid should those hours fall on the weekend.
9. In response to the second question at paragraph [199] of the Decision, clause 26.4 of the Exposure Draft does entitle a continuous shiftworker to additional payment for working ordinary hours between midnight Friday and midnight Sunday. For mill shiftworkers, this is consistent with the entitlement in clause 32.4 of the *Sugar Industry Award 2010*. For bulk terminals shiftworkers, this is consistent with the entitlement in clauses 6.5.2 and 6.5.3 of the *Bulk Terminals Award – State 2003*.
10. The AWU notes that the additional payment for bulk terminals shiftworkers in proposed clause 26.4 is not payable in addition to the shift loadings in clause 26.5 of the Exposure Draft.
11. Proposed clause 26.4(a) states that the additional payment applies *where shiftwork is regularly performed on a three shifts per day basis*. The AWU understands that the words, *all time worked up to eight hours in any shift*

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014247-sub-awu-281117.pdf>

assumes that an operation in which shiftwork is regularly performed in three shifts every 24 hours would be performed in three shifts of eight hours each.

12. The proposed “minimum hourly rate” refers to that of a permanent employee.
13. The AWU submits that the two relevant pre-modern awards for bulk terminals employees⁴ and sugar milling employees⁵ provided for different entitlements for shiftworkers performing work on weekends. These entitlements have not been disturbed and the AWU understands that there has been no cogent reason to do so.

Item 33 – Single contract hourly rate

14. The AWU maintains its opposition to the removal of the *Single contract hourly rate* column in the table at clause 13.1 of the Exposure Draft.
15. As we have submitted previously⁶, if an additional clause is being inserted into the Exposure Draft in order to address the National Farmers’ Federation’s (‘NFF’) concerns that the loading may be paid on public holidays worked or during periods of annual leave, *and* the table includes a note that cross-references that same clause, it is entirely unnecessary to amend the table at clause 13.1 of the Exposure Draft.
16. The inclusion of the *Single contract hourly rate* column in the table at clause 13.1 adds to the ease-of-use of the Award and has no other effect. The AWU does not see the logic in including the calculated hourly rates of pay for all employees covered by the *Sugar Industry Award* except those on a single contract hourly rate.
17. The AWU understands that the Full Bench has not determined the content of the new clause 13.2(d) and as such, there is no content to comment on at this stage. The AWU continues to oppose the content of clause 13.2(d) proposed by the NFF as it purports to remove the entitlement for periods of long service leave.

⁴ *Bulk Terminals Award – State 2003, cl. 6.5.2, 6.5.3*

⁵ *Sugar Milling Industry Award – State 2005, cl. 6.2.4*

⁶ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014247-sub-awu-281117.pdf>

18. The AWU suggests that the proposed clause 13.2(d) be couched in more specific terms than that proposed by the NFF to ensure that the entitlement is clearly understood.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'ZD', with a long horizontal flourish extending to the right.

Zachary Duncalfe
NATIONAL LEGAL OFFICER
The Australian Workers' Union