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17 April 2016

Re: AM2014/247 AWU submissions on the Exposure Draft for the *Sugar Industry Award 2016*

Background

1. On 23 March 2016 the President, Justice Ross published a Statement which requires submissions on drafting and technical issues for Group 3 exposure drafts to be filed by 14 April 2016.

2. The President subsequently agreed to The Australian Workers' Union's (AWU) request for an extension to 18 April 2016.

3. The AWU's submissions in relation to the Exposure Draft for the *Sugar Industry Award 2016* (Exposure Draft) as published on 15 January 2016 appear below.

General structure of the Exposure Draft

Payment of wages clauses

4. The same payment of wages provisions are currently replicated in the following clauses of the Exposure Draft:

   - Clause 14.1 and 14.2
   - Clause 17.1 and 17.2
   - Clause 20.1 and 20.2

5. We submit one set of these provisions should appear in Part 7 – Other Wage Related Provisions.

6. The current repetition in the Exposure Draft appears related to the unique provision for sugar mills in clause 17.3.

7. However, it appears simpler to keep one specific clause for sugar mills in a general payment of wages clause rather than repeating the other general provisions three times in the Exposure Draft.

8. Additionally, it does not appear that clause 17.4 of the Exposure Draft is intended to be confined to Milling, Distillery, Refinery and Maintenance employees under clause 27.4 of the *Sugar Industry Award 2010*.

9. We note the averaging of ordinary hours appears to be a feature of all three sectors in the Exposure Draft (see clause 10.2 (a), cause 10.3 (a) and clause 26.1 (b)).

Higher duties

10. A similar issue arises in relation to the higher duties provisions in the Exposure Draft.

11. The same entitlement is currently repeated in clause 14.3 and 17.5. This is because the bulk sugar terminal employees are excluded from the entitlement.

12. However, we submit the more efficient approach would be having one provision in Part 7 – Other Wage Related provisions which excludes bulk sugar terminal employees.

Drafting and technical issues

13. Clause 3.2: Our understanding is the terms “Cane Protection and Productivity Boards” and “Bureau of Sugar Experiment Stations” remain relevant. There is no need to link coverage of the Exposure Draft in clause 3 to the sector definitions in Schedule I.

14. Clause 6.1 (a): It may be preferable to delete the term “maximum” and use a facilitative provision if necessary in parts of the Exposure Draft which allow for agreement over weekly ordinary hours.

15. Clause 6.1 (b): The inclusion of the word “seasonal” suggests a seasonal worker does not have the status of a full-time, part-time or casual employee. The definition in Schedule I suggests seasonal employment is concerned with a lack of permanency as opposed to not being guaranteed full-time or part-

time hours during the employment period. It appears the term “seasonal” should be deleted.

16. Clause 6.2 (e): In response to the question posed in the Exposure Draft, we see no impediment to having a maximum number of ordinary hours of less than 38 for a part-time employee. In fact, having maximum ordinary hours of less than 38 is generally the distinguishing feature of part-time employment as opposed to full-time employment in modern awards.

17. Clause 6.2 (g): Given there are a range of additional payments that could be applicable to part-time employees for working ordinary hours, we suggest the clause be amended to read: “…must be paid for ordinary hours worked at least the minimum hourly rate for the class of work performed”.

18. Clause 6.3 (d) (i): To cater for additional rates under the Exposure Draft, we suggest the first sentence be amended to read: “For each hour worked a casual employee must be paid at least: …”

19. Clause 10.2 (c): It does appear that clause 10.2 (c) specifies the rate for ordinary hours of work for field sector employees on the weekend as opposed to clause 25.2 (b).

20. Clause 10.3 (d): This type of provision is normally confined to where the hours are worked immediately before the normal commencing time or when otherwise the hours worked would be less than 38 for the week. The current wording would capture work outside the span of 6am to 6pm even if the employee has already performed in excess of 38 ordinary hours for the week. For examples of more standard provisions, see clause 36.2 (d) of the *Manufacturing and Associated Industries and Occupations Award 2010* and clause 22.4 of the *Concrete Products Award 2010*.

21. Clause 11.1 (d): The term “minimum hourly rate” should be replaced with “applicable rate of pay”. The term “applicable rate of pay” has been defined and applied by the Full Bench in relation to the *Manufacturing and Associated Industries and Occupations Award 2016*.[1] If this change is not made, some employees performing ordinary hours on a Sunday or public holiday will not receive any additional payment.

22. Clause 11.1 and 11.2: The break for a shift worker is referred to as a “meal” break in clause 11.1 and a “crib” in clause 11.2. It would be preferable to consistently use the term “meal” throughout.

[1] See *4 yearly review of modern awards* [2015] FWCFB 7236 at [95] to [106]

23. Clause 11.5 (c): We don't believe a meal allowance should be inserted unless a party raises a problem with the current provision. The introduction of a meal allowance may disturb long-existing arrangements for the provision of meals on sugar farms.

24. Clause 14.1, 17.1 and 20.1: The words "ordinary hours" should be deleted from all of these provisions so they relevant read: "according to the actual hours worked each week" or the "average number of hours worked each week". If this does not occur, the clause does not appear to capture the payment of overtime entitlements.

25. Clause 15.4 (d): We submit it is not appropriate for junior employees to only receive a proportion of disability and expense-related allowances and the clause should be amended to clarify that junior employees receive the full allowance rates.

26. Clause 16.1 (c): We submit the rate should be 200% of the "applicable rate of pay" for reasons referred to above in relation to clause 10.3 (d) and 11.1 (d). If this does not occur, some employees working ordinary hours on a Sunday or public holiday will not receive any additional payment for performing this task and may actually fall onto a lower rate.

27. Clause 16.1 (t): The same issue as referred to above for clause 16.1 (c) arises here. The rate should be 200% of the "applicable rate of pay" or employees working ordinary hours on a Sunday or public holiday may fall onto a lower rate.

28. Clause 16.1 (t) (iii): The reference to a "member of the gang" appears clear enough but "spelling time" may require some clarification. The term is probably well understood in the industry but an outsider may be led to believe a worker does not receive the allowance if they revert to practicing their spelling in the relevant hot work area.

29. Clause 16.1 (t) (iv): It is not clear which other allowances are excluded based upon the current wording. This clause should be redrafted during the review process.

30. Clause 16.1 (v) (iii): The reference to "in addition to the rates prescribed" appears intended to clarify this is an additional amount not affected by the payment of any other rates.

31. Clause 16.1 (dd): As per our submissions above for clause 16.1 (c) and (t), the allowance should be 200% of the "applicable rate of pay" – otherwise an

employee working in the rain on a Sunday or public holiday receives no additional compensation or potentially drops to a lower rate.

32. Clause 17.4: In addition to this clause seemingly applying to all sectors currently under the Award, the practical effect of the provision is unclear.

33. Clause 26.2: The definition of “shift worker” should be deleted as it creates ambiguity with the provisions which follow because they are not confined to employees working in a 24/7 continuous operation. The definition appears more directed at the entitlement to an additional week of annual leave as per clause 27.2.

34. Clause 26.5 (b): This clause seemingly prohibits the working of continuous night shifts. If this is not the case, a loading of 30% should apply. The reference to the 30% shift loading being paid “instead of any other shift allowance” appears intended to be confined to the 15% loading which would otherwise apply, given the weekend rates in clause 26.4 are in addition to other shift loadings.

35. Clause 26.10 (g): The 20% figure is used instead of “one fifth” in other parts of the Exposure Draft and should be inserted here.

36. Clause 27.6 (c): We agree the effect of this provision needs to be clarified with reference to the predecessor instrument.

37. Clause 33.5 (f): The reference to “severance payments as set out in clause 32 – Termination of employment” should be amended to “notice payments”.

38. Schedule D.3.1: It appears a footnote is required for the 150% and 200% rates indicating these are paid for work outside the span of ordinary hours.

39. Schedule D.3.2: The heading does not identify these are shift rates and the table does not contain higher rates payable for shifts on the weekend by bulk terminal operators.

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