

Fair Work Commission
Terrace Tower, 80 William Street
East Sydney NSW 2011
By email: amod@fwc.gov.au

21 July 2016

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

Background

1. During a Conference before Deputy President Asbury on 14 July 2016 The Australian Workers' Union (AWU) undertook to provide an update in writing of our position on some outstanding issues regarding the exposure draft for the *Sugar Industry Award 2016* (Exposure Draft) within 7 days.
2. Our position on these matters is outlined below.

Weekend penalty rates for shift workers in bulk terminals

3. The weekend penalty rates for shift workers in bulk terminals are ambiguous in the current *Sugar Industry Award 2010* (the Award) and the Exposure Draft.
4. The shift work provisions in clause 32 of the Award and clause 26 of the Exposure Draft are expressed broadly enough to capture employees in the bulk terminals sector. These provisions allow for ordinary hours to be worked on the weekend.
5. In contrast to sugar milling¹ workers, there are no specific penalty rates identified for shift work on the weekend by employees in bulk terminals.
6. However, double time rates are currently payable for all work on Sundays pursuant to clause 31.2 (b) of the Award.
7. A potential amendment to the wording of the corresponding provision in the Exposure Draft, clause 25.2 (b), to the effect that the provision only applies to overtime has been discussed by the parties during the award review process.

¹ See clause 26.4 and 26.7 of the Exposure Draft and clause 32.4 and 32.6 of the Award

The AWU's position on this proposed amendment is contingent on whether other provisions in the Exposure Draft adequately deal with the rates payable for ordinary hours worked on a Sunday for all classes of employees.

8. The only pre-modern award that dealt specifically with bulk terminals appears to be the *Bulk Terminals Award – State 2003*² (Bulk Terminals Award).
9. Clauses 6.5.2 and 6.5.3 of the Bulk Terminals Award prescribed the following weekend penalties for shift workers:
 - Continuous work: time and a half on Saturday and double time on Sunday; and
 - Non-continuous work: Midnight Friday to 6pm Saturday – time and a half; 6pm on Saturday to midnight Sunday – double time.
10. On this basis, we propose the following amendments to clause 26 of the Exposure Draft:
 - i) The definition of “shiftworker” in clause 26.2 (a) be amended to read the following as per Annexure B of the ‘Report to the Full Bench’ dated 3 June 2016 (page 9):

Shiftworker is an employee who can be regularly rostered to work in accordance with a roster where more than one shift a day is worked or on Sundays and public holidays where the employer operates shifts continuously rostered 24 hours a day seven days a week.

- (ii) Amend clause 26.4 to read:

26.4 Extra weekend payments – other than field sector

(a) Sugar milling

For sugar mill employees, where continuous shiftwork is regularly performed on a three shifts per day basis, over a period of seven days per week, all time worked up to eight hours in any shift between midnight Friday and midnight Sunday must be paid at 150% of the minimum hourly rate. Such payments will be in addition to any

² See the Commission's 'Draft awards audit by modern awards (Excel)' revised 3 January 2012 found here: <https://www.fwc.gov.au/resources/research/awards-research>

allowance payable for the working of an afternoon or night shift.

(b) Bulk terminals

For bulk terminal employees, shift work ordinary hours performed between midnight Friday and midnight Saturday must be paid at the rate of 150% of the minimum hourly rate. Shift work ordinary hours performed between midnight Saturday and midnight Sunday must be paid at the rate of 200% of the minimum hourly rate.

Additional issue regarding shift work by field workers on the weekend

11. Clause 26.6 of the Exposure Draft permits the working of shift work by field sector employees and prescribes afternoon and night shift allowances.
12. However, the rates applicable to shift work on the weekend by field sector workers are unclear.
13. Clause 11.2 (c) of the Exposure Draft states all ordinary time worked on Saturdays and Sundays by field sector employees will be paid at 150% of the minimum hourly rate. However, the heading for clause 11 suggests that the ensuing provisions only apply to day workers.
14. Clause 25.2 (b) of the original version of the Exposure Draft referred to a rate of 200% for all work done on a Sunday. This wording reflects clause 31.2 (b) of the Award and is broad enough to cover overtime and ordinary hours on a Sunday.
15. However, the rate payable for shift work ordinary hours on a Saturday is unclear because clause 25.2 (a) of the Exposure Draft and clause 31.2 (a) of the Award appear confined to overtime on a Saturday.
16. The most relevant³ pre-modern award for field sector employees appears to be the *Sugar Field Sector Award – State 2005*. Clause 6.1.2 of that award was in very similar terms to clause 11.2 (c) of the Exposure Draft except there was no indication that the rates did not apply to shift workers.

³ See the Commission's 'Draft awards audit by modern awards (Excel)' revised 3 January 2012 found here: <https://www.fwc.gov.au/resources/research/awards-research>

17. We submit this current ambiguity needs to be addressed by the Commission in the award review process.

Single contract hourly rate

18. We have reviewed the issues raised by the National Farmers' Federation (NFF) in their email dated 8 July 2016 and Canegrowers Mackay in their correspondence dated 15 June 2016.

19. We accept the 15% single contract hourly rate loading is not paid in lieu of public holiday penalties under the current Award and do not oppose an amendment to the Exposure Draft to clarify that the 15% loading is not paid in addition to public holiday penalty rates.

20. We also generally accept that the 15% loading would not currently be paid on periods of paid leave under the Award and the National Employment Standards.

21. However, any amendment should be worded in a manner that does not purport to remove the entitlement for periods of long service leave as this matter must not be dealt with in the Award or Exposure Draft.⁴

Facilitative provisions

22. We participated in a teleconference with the Australian Manufacturing Workers' Union, the NFF and the Australian Sugar Milling Council on 15 July 2016.

23. The parties reached an agreed position regarding a table of facilitative provisions during this conference. We understand the NFF will provide that table to the Commission in due course.

Award coverage interaction issue - clause 4.3

24. We consider the wording in clause 4.3 of the Exposure Draft and the Award to be ambiguous and are content for the provision to be deleted. The issue of overlapping coverage would then be determined by clause 4.7.

25. This is the approach generally adopted across modern awards and we see no need for a departure from it in relation to this industry.

Schedule D – errors with rates

⁴ See s 155 of the *Fair Work Act 2009*

26. The table of rates in Schedule D.3.1 appears intended to prescribe the rates for ordinary hours performed by day workers in bulk terminals.
27. In this context, the column containing Monday to Friday rates of 150% for the first 3 hours and 200% after 3 hours are incorrect and should be deleted.
28. The ordinary hours for day workers in bulk terminals must be worked between 6am to 6pm from Monday to Friday⁵. The permanent employee rate for ordinary hours within this period is 100% and hours outside of this span would be paid at the overtime rate of 200%⁶.
29. The corresponding column in the rates table appearing in Schedule D.3.4 for casual employees should also be deleted.
30. In relation to Schedule D.3.2, a reference to shiftworkers needs to be added into the heading as the rates are only payable to shiftworkers.
31. The column heading of "Other than day shift" would also be clearer if it read "Continuous afternoon/night shift or no rotation to day shift" with a footnote to clause 26.5. This same change would be required in the table in Schedule D.3.5.
32. In relation to Schedule D.3.3, the word "shiftworkers" should be deleted as the overtime rates cited of 200% and 250% on public holidays are payable to all employees in bulk terminals.⁷



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⁵ See clause 11.3 (b) of the Exposure Draft

⁶ See clause 25.3 of the Exposure Draft

⁷ See clause 25.3 and 30.2 of the Exposure Draft