



5 April 2019

Justice Ross  
President Fair Work Commission  
PO Box 1994  
MELBOURNE VIC 3001

Via Email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Justice Ross

**Re: AM2014/249, AM2014/1 – Exposure Draft Wine Industry Award, Group 3**

**Background**

In accordance with the Statement issued on 28 February 2019 in relation to the plain language project and the Exposure Draft Wine Industry Award, the South Australian Wine Industry Association (SAWIA) provides the following submission.

SAWIA is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA is the oldest wine industry organisation in Australia and has existed, albeit with various name changes, since 1840. SAWIA is a registered association of employers under the South Australian *Fair Work Act 1994* and is also a Recognised State-Registered Association under the *Fair Work (Registered Organisations) Act 2009*.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA proactively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

What SAWIA does for members is covered in four key areas:

- Representation and Leadership;
- Advice and Information;
- Products and Services; and
- Promotion and Opportunities.

SAWIA has a long standing interest in employment, immigration and related policy areas. SAWIA's policy positions in relation to employment are proposed and endorsed by our Employee Relations Committee, which comprises of HR Executives and Senior Managers, some with national responsibilities, drawn from the membership.

We take a national lead on behalf of the Australian wine industry in relation to matters pertaining to industrial relations, including modern awards, vocational education and training and migration.

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## South Australian wine industry

South Australia overwhelmingly is the largest wine producing State in Australia, representing close to 50% of the total grape crush and is the home to the major wine corporations' production bases and produces around 80% of Australia's premium wines.

**Figure 1: Crush by State and region<sup>1</sup>**

State/Regions	2018 Raw Crush Data Tonnes	% of total crush
South Australia	747,361	49%
New South Wales	317,754	21%
Victoria	68,827	4%
Western Australia	32,819	2%
Queensland	652	<0.05%
Tasmania	12,549	1%
Australian Capital Territory	12	<0.05%
Murray Darling-Swan Hill <sup>2</sup>	345,458	23%
TOTAL	1,525,432	100%

In addition, 56% of the total area of wine grape plantings is located in South Australia. Measured in value, South Australian wine represents 70% of Australian wine exports.

### **Specific comments on the *Exposure Draft Wine Industry Award*:**

SAWIA advise and assist wine industry employers on a daily basis with the Wine Industry Award 2010 (the Award) and this has given SAWIA an intimate knowledge of the practical application, interpretation and understanding of the Award, not only in South Australia, but nationally. We therefore take a close interest in any matter affecting the Award.

SAWIA notes that the Exposure Draft adopts the structure and language as determined following the Plain Language project. We therefore do not seek to raise matters that already have been dealt with as part of the Plain Language Project. However, we wish to make the following specific comments on the Exposure Draft:

#### **- 6.6 Casual conversion to full-time or part-time employment**

*"6.6(a) sets out eligibility for conversion as follows:*

*An eligible casual employee is a casual employee:*

- (i) who works on a regular and systematic basis;*
- (ii) who is employed for a sequence of periods of 12 months; and*
- (iii) whose employment is to continue beyond the period of 12 months."*

This qualification is consistent with the current provision 13.5 of the Award.

However, the Exposure Draft then goes on as follows:

*"An eligible casual employee has the right, after **six months**, to elect to have their contract of employment converted to full-time or part-time employment."*  
[Emphasis added]

The reference to six months is incorrect, in contradiction with the qualifications in 6.6(a), (i), (ii) and (iii) and in contradiction with the current clause 13.5.

SAWIA submits that the paragraph following clause 6.6(a)(iii) in the Exposure Draft should be corrected to refer to "twelve months".

<sup>1</sup> Wine Australia 2018, National Vintage Report 2018

<sup>2</sup> This region crosses the State borders of Victoria and New South Wales



- **12. Piecework rates:**

This matter was raised by the Fair Work Ombudsman (FWO) in 2 March 2015. Conferences between parties were held before C Hampton in May and July 2015 and parties also met independently where this matter was discussed.

As noted in the Report to the Full Bench (PR70692), issued on 11 August 2015, the parties considered the matter raised by FWO as follows.

**[18]** The parties consider that the present provisions are relatively clear and that it is intended that the casual loading is included for the purposes of calculating piecework rates.

In light of this and based on the daily interaction we have with wine industry employers we do not see that there is any ambiguity in relation to clause 12 of the Exposure Draft.

SAWIA therefore does not see any great need to pursue the FWO's matter any further.

However, if the Full Bench is of the view that the clause needs to change, then SAWIA would seek to appear and make further submissions.

- **16.2(a). Leading hands:**

The clause in the Exposure Draft as well as in the current Award places the leading hand allowance for the coopers stream before the leading hand allowance for all other streams, including cellar, cellar door sales, vineyard, warehousing, bottling and laboratory.

Cooperage, namely, the making, including toasting of oak barrels, and associated services, including advice and expertise and repairs is a distinct and important section of the wine industry. However, compared to the overall wine industry it is a small subset, employing only a small fraction of the close to 21,000 employees in the Australian wine industry.

Whilst SAWIA does not have any issues with the wording of clause 16.2, in simplifying the structure of the Award, it would of benefit if the leading hand allowance which is used by wineries and winegrape growers across the cellar, cellar door sales, vineyard, warehousing, bottling and laboratory streams, would come first.

This would involve changing the sequence of the leading hand allowance for coopers and the allowance for other streams, so that the leading hand allowance for other streams become 16.2(a)(i) and the leading hand for coopers become 16.2(a)(ii).

- **Schedule B. Summary of Hourly Rates of Pay**

SAWIA understands that the purpose and intent of Schedule B is to provide an overview of the hourly rates under the Award. However, unless the appropriate explanation/context is given, there is real risk that rates will be utilised in circumstances they do not apply.

There are examples of this in Schedule of the Exposure Draft.

- **B.1.1 and B.2.1**

The two tables set out rates of pay, including rates for working Saturdays and Sundays in ordinary time. Both tables include the notation "Saturday cellar door or vineyard". Whilst there is no dispute about the Saturday penalty rate being payable throughout the year in the cellar door, SAWIA is concerned about the reference to the vineyard.

The reference to the vineyard in relation to Saturdays in ordinary time gives the impression that any time a vineyard employee works on a Saturday, the penalty rate in 18.1(a) is payable. Clearly that is not the case as Saturdays can only be worked in ordinary time during vintage, in accordance with clause 8.6(a)(ii) and 8.6(b).



To provide greater clarity, SAWIA submits that the tables in B.1.1 and B.2.1 be amended to clarify this limitation. This could be done as follows:

*Saturday – cellar door or vineyard (**vintage only**)*

Yours sincerely

**HENRIK WALLGREN**

Business and Workplace Adviser

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