

SUBMISSION TO THE FAIR WORK COMMISSION

ON

4 YEARLY REVIEW OF MODERN AWARDS

Award Stage – Group 1 – Meat Industry Award 2010

(AM2014/78)

THE AUSTRALIAN MEAT INDUSTRY COUNCIL

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**PROPOSALS TO VARY THE MEAT INDUSTRY AWARD
(AMIC Paper for 23 June conference in Award Stage - Group 1)**

SECTION A

1. Clause 36 - Overtime Provisions

Variation proposed by AMIC

AMIC proposes to insert the words 'on any day' after the words 'working hours' in the first line of clause 36.1(a).

Reasons

During the Part 10A award modernisation process, the AIRC Full Bench in essence amalgamated the content of the three pre-reform Federal meat industry awards - meat processing, meat smallgoods manufacture and meat retail/wholesale. The Full Bench took that approach by reason of the fact that these three pre-reform awards had been recently simplified and were the subject of substantial arbitration in the period 1998-2001, and were then in a form that lent itself to being largely adopted as suitable content for a Modern Award.

In each of the pre-reform awards the words 'on any day' appeared in all of the overtime clauses. For some reason that was not revealed they were omitted when the Modern Meat Industry Award 2010 was released by the Fair Work Commission. Without these words there is some ambiguity as to how and when the overtime provisions commence to operate, that is, whether an employee becomes entitled to overtime:

- (a) after ordinary hours are completed each day, or
- (b) at the completion of the ordinary hours for (say) a week.

Since 2010, the Fair Work Ombudsman (FWO) has raised the issue with some AMIC members. AMIC, on behalf of those members, made a written submission to the Office of the FWO. The submission, inter alia, referred to other clauses in the award e.g clauses 31.2 (c) and (d) to argue that the overtime entitlement 'kicks in' at the completion of ordinary hours each day.

The Office of the FWO accepted the submission and has no longer pursued the issue. Irrespective of the FWO accepting the AMIC representation, the opinion of AMIC and FWO is not binding, and any perceived ambiguity should be remedied in the manner suggested above.

In the present proceedings, the Office of the FWO has again raised the issue as follows:

- in the filed Research Paper dated 11 April (see Appendix B on pages 17 and 19), and

- in the FWO paper dated 9 May dealing with Award Stage, Group 1 Modern Awards (see issue 17 in the attached table and reference to possible ambiguity).

The variation sought to the award by AMIC is necessary to correct an oversight, and will remove any possible ambiguity in favour of the longstanding position under the predecessor awards.

2. Clause 24 – Payment by Result

Variation proposed by AMIC

AMIC proposes to add a new sub-clause 24.14 (c) as follows:

“For the avoidance of doubt, the making of a bonus payment or similar additional reward to employees upon the event of an employee or group of employees achieving an expected or predicted level or quality of production does not operate to render a timework payment system as an incentive payment system, if each of the other features of a timework payment system set out in sub-clause (b) are observed.”

Reasons

The Payment by Result provision (clause 24) of the award was originally inserted into the Federal Meat Processing Award 2000 by a Full Bench of the AIRC following lengthy arbitration proceedings (*Print R9075*).

The decision of the Full Bench resulted in the inflexible and archaic tally provisions being removed from all Federal awards, to be replaced by a simplified Payment by Result clause. The decision of *Print R9075* was delivered against the background of the application which was primarily directed towards the abolition of the prescriptive ‘one size fits all’ tally system in meat industry awards, and inserting the current clause to facilitate the making of flexible, tailor-made payment systems for individual plants or parts of plants. The choice was between traditional payment for all time worked, or adoption of an incentive payment scheme that allowed for the earning of (higher) pay based on the quantum of work.

The Full Bench during the Part 10A process inserted the Payment by Result clause from the 2000 Award into the Modern Meat Industry Award 2010 without variation.

Because of the way the application was framed and litigated in 1998 - 2001, neither the employer applicants nor the AIRC envisaged a situation where a meat establishment had in place a timework payment system, which they wished to supplement by a bonus system if an event occurred - be it a quantitative or qualitative event.

Clause 24 expressly contemplates that the setting of quality or production benchmarks does not change the status a timework payment system, so as to require it to be treated as an incentive payment system. However it has emerged as a moot point as to whether the provision of a bonus payment or financial reward for achieving such a milestone, if and when it occurs, in addition to all timework payments, causes the

work system to be characterised as an incentive payment system under the Award definitions in clause 24.

This situation should be clarified, so that an employer is entitled to reward good conduct and performance when it occurs, without the risk that such an arrangement may compromise the standing of the time payment scheme that is otherwise in place.

It is this anomaly that the application seeks to address.

3. Competency based apprenticeship provisions

Variation proposed by AMIC

AMIC foreshadows to insert a new clause 21.3 into the award per the attached variation marked 'A'.

Reasons

In 2012 AMIC applied to include a similar provision but withdrew the application for technical reasons. It was one of a number of applications during the 2012 Transitional Review that dealt with apprenticeship issues. All the applications were referred to a Full Bench.

The Full Bench dealt with many of the issues as a matter of principle: [2013] FWCFB 5411.

AMIC members – in the meat retail sector – have reached a tentative view to pursue the issue of competency based provisions during the 2014 award review process. Hence the present application. The application is tailored to meet the needs of the meat industry.

Query whether this matter is best dealt with under the (i) meat industry award banner, or (ii) the apprenticeship banner. The Commission's view would be the latter we assume.

4. Other non-wage apprentice conditions

Variation proposed by ACTU

The ACTU has made application in relation to a number of awards concerning these issues.

As a result of the draft statement issued by the Full Bench 22 May last these matters are to be dealt with by the Full Bench that considered the apprentice provisions during the 2012 Transitional Review with an initial conference before Commissioner Roe.

5. Annual leave matters

There are annual leave applications to vary most of the modern awards. The applications come from both employer groups and the ACTU. The Meat Industry Award is part of the employer group and the meat Industry Award is listed.

These matters are being dealt with by a Full Bench as Common Issues.

6. Other matters raised by FWO

The FWO has made comment in the aforesaid Research Paper dated 11 April on format for the Meat Industry Award. These do not have to be dealt with at this point.

SECTION B - AMIEU issues

When the Group 1 Conference was convened by the President the AMIEU submitted a short paper to FWC as to the issues it wished to raise during the review of the Meat Industry Award 2010. AMIC's response to these issues is dealt with below.

As noted in the 2 June Statement issued by the Full Bench for the Award Stage, the AMIC and AMIEU have had discussions over the issues raised below. However, during those discussion neither the AMIEU nor AMIC produced any proposed award variation.

1. Transfer from one category to another in meat processing establishments – clause 11.4

The AMIEU raises a concern about clause 11.4. The AMIEU states it does not seek the removal of clause 11.4 from the award but simply to have some restrictions upon the frequency of transfer.

The provision contained in clause 11.4 of the award has been in operation since 2000 when, in effect, a Full Bench handed down what is known as 'the Tallies Decision'.

Leaving aside approved Enterprise Agreements agreed to by employees under legislative provisions, AMIC is unaware of any issue having arisen concerning the operation of clause 11.4 for employers directly applying the award.

If the AMIEU states that the issue relates to the operation of enterprise Agreements then this is not an issue that relates to the Modern Award Objective, although this is a matter for evidence and submissions if the issue is pursued before the Full Bench.

The present issue is whether agreement can be reached between interested parties. AMIC is prepared to consider a numerical limit (say 6) on the number of times per annum that clause can be invoked, if the AMIEU is able to produce some evidence of the existence of a problem or any form of abuse of this provision.

2. Distinction between daily/weekly hire (no clause referenced)

The AMIEU, in effect, complains of a blurring between daily hire employees and full time employees. The AMIEU has exemplified the issue by referring to stand down provisions. AMIC does not understand the point that is to be made. Neither AMIC nor FWC have any control over the content or operation of the legislation.

Section 524 (1) of the Fair Work Act provides the circumstances whereby stand down is permitted by an employer. No award provision could override this section. Notes 1 and 2 in section 524(2) - as part of the legislation - explain the interrelationship between stand down and enterprise agreements.

A provision concerning stand down in an enterprise agreement must have been agreed in accordance with the Fair Work Act provisions. The provision may impose additional conditions than those in 524(1) or be in the same terms as 524(1). In all the circumstances, there is an agreement.

The present provisions in the Modern award as to the operation of daily hire were lifted from the 2000 Federal Meat Processing Award. The 2000 award resulted from decisions of a Full Bench of the AIRC that abolished tallies from the meat industry and substituted simplified terms. The only intervening event between 2000 and now is the Fair Work Act.

In the Federal awards that existed prior to the Full Bench decision abolishing tallies, it was mandatory for employees to be employed as daily hire if the employee was engaged under the tally provisions. Once tallies were abolished as an award term, daily hire became a stand-alone employment category, and not dependent upon tally work.

In reality, the AMIEU is simply stating it is concerned that terms in Enterprise Agreements covering stand down may be wider than section 524(1) of the Act. It is difficult to see how this concern can be an issue in this Review process, having regard to the matters set out in the Full Bench preliminary jurisdictional decision: [2014] FWCFB 1788.

Referencing tribunal decisions (and a mere sentence or two) from half a century ago - in a different industrial and award context cannot assist the AMIEU position on this issue.

3. Payment on public holiday (clause 40.2)

The AMIEU points to a possible anomaly concerning clause 40.2 and the absence of the part-time category in the last paragraph of the clause.

The omission of part-time employees and daily hire employees from the last paragraph of clause 40.2 is accepted as being an anomaly, and the inclusion of them is not opposed, with one substantial reservation. The clause does not and cannot apply

to any employee engaged under an incentive payment scheme, as provision for public holidays for those employees is separately provided in clause 24.

The history of this issue will assist in understanding the situation.

The 1996 processing award

- a. The 1996 Federal Meat Processing Award contained tally provisions in an Appendix and daily hire was only relevant to employees engaged under the tally Appendix. Daily hire was not found in the main body of the award that covered full-time, part-time and casual employment categories.

Public holiday payments for daily hire under the 1996 award

- b. The 1996 meat processing award - in the main body of the award - provided for public holiday payment in much the same terms as the present last paragraph of 40.2. It did include:
 - the category of part-time employees alongside full-time employees, but
 - casuals were not included.
- c. There was no reference to daily hire in the public holiday clause of the 1996 award (nor could there be) because public holiday payments for tally/daily employees were found in the tally Appendix.

Events leading to the making of the 2000 meat processing award

- d. As stated above, AMIC made application in 1999 to modernise and rationalise the 1996 award by replacing it with a completely new document. The application sought to rid the industry of the tally provisions completely. It was to become a major application before the AIRC and a major Full Bench decision (R9075).
- e. The AIRC tally decision provided for a new Payment by Result clause. In that clause, the Full Bench decided how incentive employees would be paid for public holidays: these were clauses 16.9 and 16.12 in the Meat Processing Award 2000.
- f. Clauses 24.10 and 24.12 of the modern meat award 2010 are in the same terms as clauses 16.9 and 16.12 in the pre-reform 2000 award.
- g. The public holiday payment for incentive employees when working is in accordance with clause 24.10. The public holiday payment for incentive workers working ordinary hours on public holiday is clause 24.12.
- h. The public holiday provisions were inserted into the Modern Meat Industry Award 2010 by the Full Bench by agreement between the AMIC, AMIEU.
- i. From the above, it can be seen that the present public holiday provisions in clause 40.2 have never applied to daily hire employees on an incentive scheme, nor to tally workers under the 1996 award. Clause 40.2 is predicated upon the employee being engaged under a timework system of payment;

What should happen in 2014?

- j. It is AMIC's view that the last paragraph of clause 40.2 may be amended to read as follows:

'For all employees, other than casual employees and those employees engaged under an incentive payment system in accordance with clause 24, the above payments will be in addition to the ordinary weekly, daily or hourly rate of pay as appropriate.'

If the AMIEU seek the inclusion of daily hire employees on incentive and/or casual employees in the last paragraph of clause 40.2, that variation will be opposed.

4. Shiftwork Transfer

The AMIEU states the term it seeks was in old awards. It was present in the 1996 Federal Meat Processing Award, but it was not brought forward into the 2000 Processing Award by the Full Bench, without objection.

Upon the Modern Award being made as an aggregation of the three existing awards, the fact that this provision was not found in the 2000 processing Award, but did exist under the Smallgoods and Retail/Wholesale Award, was reflected in the terms of clause 33.9(e) of the Modern Award.

AMIC has no opposition to widening the scope of clause 33.9(e) to include meat processing establishments. This can be done by deleting the words "*In establishments other than meat processing establishments*" from that subclause.

5. Meat Inspectors

By agreement between the AMIC and AMIEU this potential coverage issue is to be deferred and possibly dealt with in 2015. This agreement was noted in the 2 June Statement of the Full Bench.

A

1. By inserting after sub-clause 21.2 in the award the following:

21.3 Apprenticeship conditions of employment

- 21.3.1 The terms of this award apply to apprentices in the meat industry except where otherwise stated. Apprentices may be engaged in trades or occupations that are defined and provided for in Schedule A – Classification Structure where such trades or occupations are declared or recognised by an apprenticeship authority.
- 21.3.2 For the purposes of this clause herein, **apprenticeship authority** means a State or Territory training authority with the responsibility for the apprenticeship.
- 21.3.3 In any State in which any statute or regulation relating to apprentices is in force, that statute and regulation will operate in that State provided that the provisions of the statute or regulation are not inconsistent with this award in which case the provisions of this award will apply.
- 21.3.4 An apprentice may be engaged under a training agreement approved by the relevant apprenticeship authority, provided the qualification outcome specified in the training agreement is consistent with that established for the vocation in the training package.
- 21.3.5 Apprenticeships under this award are competency based. The actual time taken to complete an apprenticeship will therefore vary depending upon factors such as the intensity of training and the variety of work experience and any additional requirements set out in this award.
- 21.3.6 The nominal period of the apprenticeship is up to four years, however this period may be varied as follows:
- a) to make up for lost time as set out in clause 21.3.14; and/or
 - b) with the approval of the relevant State or Territory apprenticeship authority, to recognise prior learning including vocational education and training in school, pre-apprenticeship programs and other prior learning, the nominal period may be shortened to reflect the proportion of the competencies already acquired; and/or
 - c) it may be extended by up to six months in Stage 3 and 12 months in Stage 4 in the apprenticeship where required to complete the competencies.
- 21.3.7 Notwithstanding the nominal period, the apprenticeship may be completed in a shorter period when:
- a) the qualification specified in the training agreement is successfully completed; and

- b) the apprentice has the necessary practical experience to achieve competency in the skills covered by the training agreement, provided that the determination as to whether this condition has been met must be by agreement between the registered training organisation, the employer and the apprentice and where there is a disagreement concerning this matter the matter may be referred to the relevant state/territory apprenticeship authority for determination; and
 - c) the requirements of the relevant state/territory apprenticeship authority with respect to demonstration of competency and any minimum necessary work experience requirements are met; and
 - d) with respect to trades where there are additional licensing or regulatory requirements under State legislation or this award, when these requirements are met.
- 21.3.8 An apprenticeship may be cancelled or suspended only in accordance with the requirements of the training agreement and the requirements of State legislation and the apprenticeship authority.
- 21.3.9 The probationary period of an apprentice is as set out in the training agreement or contract of apprenticeship consistent with the requirement of the apprenticeship authority and with State legislation but must not exceed three months.
- 21.3.10 Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
- a) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
 - b) Time spent by an apprentice, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. This clause operates subject to the provisions of Schedule C – School Based Apprenticeship.
 - c) The notice of termination provisions of the NES apply to apprentices. The redundancy provisions of the NES do not apply to apprentices.
- 21.3.11 The ordinary hours of employment of apprentices in each enterprise are not to exceed those of the relevant tradesperson.
- 21.3.12 The minimum wages applying to apprentices under this award are dealt with in subclause 21.3.1 and 21.3.2 and no apprentice is to work under a system of payment by results.
- 21.3.13 In order to undertake trade training a person must be a party to a training agreement in accordance with the requirements of the apprenticeship

authority or State legislation. The employer must provide and/or provide access to training consistent with the training agreement without loss of pay.

- 21.3.14 The nominal period of the apprenticeship is extended by an additional day for each day of absence during each year of the apprenticeship, except in respect of absences due to annual leave or long service leave.
- 21.3.15 Periods of paid personal/carer leave which total ten or less days in any apprenticeship year do not extend the nominal period of the apprenticeship.
- 21.3.16 Except where the apprentice meets the competency requirements to progress to the next stage as set out in clause 21.3.17 the following year of their apprenticeship does not commence until the additional days have been worked. However, any time that has been worked by the apprentice in excess of their ordinary hours must be credited to the apprentice when calculating the amount of additional time that needs to be worked in the relevant year.
- 21.3.17 Competency based progression
- a) For the purpose of competency based wage progression in clause 21.3.1 and 21.3.2 an apprentice will be paid at the relevant wage rate for the next stage of their apprenticeship if:
 - i competency has been achieved in the relevant proportion of the total units of competency specified in clause 21.3.19 for that stage of the apprenticeship. The units of competency which are included in the relevant proportion must be consistent with any requirements in the training plan; and
 - ii any requirements of the relevant State/Territory apprenticeship authority and any additional requirements of the relevant training package with respect to the demonstration of competency and any minimum necessary work experience requirements are met; and
 - iii either:
 1. the Registered Training Organisation (RTO), the employer and the apprentice agree that the abovementioned requirements have been met; or
 2. the employer has been provided with written advice that the RTO has assessed that the apprentice meets the abovementioned requirements in respect to all the relevant units of competency and the employer has not advised the RTO and the apprentice of any disagreement with that assessment within 21 days of receipt of the advice.
 - b) If the employer disagrees with the assessment of the RTO referred to in clause 21.3.17(a)(2) above, and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the matter may be referred to the relevant State/Territory apprenticeship

authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.

- c) For the purposes of this clause, the training package containing the qualification specified in the contract of training for the apprenticeship, sets out the assessment requirements for the attainment of the units of competency that make up the qualification. The definition of “competency” utilised for the purpose of the training packages and for the purpose of this clause is the consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.
- (d) The apprentice will be paid the wage rate referred to in clause 21.3.17(a) from the first full pay period to commence on or after the date on which an agreement or determination is reached in accordance with clause 21.3.17(a)(iii) or on a date as determined under the dispute resolution process in clause 21.3.17(b).

21.3.18 The minimum wages for an apprentice are as set out in the following table, provided that progression through the stages set out in this table is in accordance with clause 21.3.19.

<u>Year or Stage of apprenticeship</u>	<u>% of MI7</u>
Stage 1	50
Stage 2	60
Stage 3	85
Stage 4	95

An employee who is under 21 years of age on the expiration of their apprenticeship and thereafter works as a minor in the occupation to which the employee was apprenticed must be paid at not less than the minimum wage prescribed for the classification.

21.3.19 Conditions for progression through each stage

The conditions for progression to each stage are set out in the following tables:

Stage of apprenticeship Entry, exit and progression requirements

Stage 1

Entry

Nil entry requirements.

Exit

There is no exit point at this stage.

Stage 2

Entry

An apprentice enters Stage 2:

- on attainment of 25% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan; **or**
- 12 months after commencing the apprenticeship, subject to clause 21.3.14;

whichever is earlier.

Exit

There is no exit point at this stage.

Stage 3

Entry

An apprentice enters Stage 3:

- on attainment of 50% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan; **or**
- 12 months after commencing Stage 2, subject to clause 21.3.14;

whichever is earlier.

Exit

There is no exit point at this stage.

Stage 4

Entry

An apprentice enters Stage 4:

- on attainment of 75% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan; **or**
- 12 months after commencing Stage 3, subject to clause 21.3.14;

whichever is earlier.

Exit

Upon the attainment of 100% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan and subject to clauses 21.3.5, 21.3.6, 21.3.7 and 21.3.14, an apprentice will exit with the relevant AQF Certificate III qualification.

Note: The attainment of the relevant AQF Certificate III qualification in slaughtering or smallgoods making does not of itself mean the holder is a Trade Qualified Slaughterer or a Smallgoods Maker for the purpose of this award unless the holder attains other competency as set out in the classification definitions.
