Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Plain Language Re-drafting
Redundancy
Sugar Industry Award 2010
(AM2016/15)

14 February 2020

4 YEARLY REVIEW OF MODERN AWARDS
AM2016/15 – PLAIN LANGUAGE RE-DRAFTING – REDUNDANCY

1. This submission is made by the Australian Industry Group (**Ai Group**) in response to the Decision issued by the Fair Work Commission (**Commission**) on 29 January 2020 (**Decision**)[1] and the accompanying Draft Determination varying the *Sugar Industry Award 2010* (t**he Award**).

2. At paragraphs [6] - [11] of the Decision, the Commission expressed the provisional view that the Award should be varied to include the plain language standard redundancy clause while retaining the current award-specific redundancy elements. The Draft Determination is intended to reflect this provisional view.

3. Ai Group does not oppose the inclusion of the plain language standard redundancy clause in the Award or the retention of award-specific redundancy elements which are a feature of the current Award. However, we have identified some issues of concern regarding the terms of the Draft Determination, as discussed below.

Retention in employment of apprentices

4. Section 123 of the FW Act exempts certain categories of employee from notice of termination and redundancy pay entitlements. Clause 16.6 of the current award provides an exception to the limitation ordinarily imposed by s.123 of the FW Act in the case of apprentices and 'fixed-term employees' in sugar mills, as follows:

> **16.6 Redundancy pay—apprentices and fixed term employees in sugar mills**
>
> The NES limitation on redundancy in s.123 of the Act for an employee employed for a specified period of time or for a specified task will not apply to employees of sugar mills where such employees are:

[1] [2020] FWCFB 379.

(a) engaged on a series of consecutive contracts where the period of actual service covered by the series of contracts totals in excess of 12 months. For the purpose of this clause the continuity of an employee's service with an employer is taken not to be broken by a period between fixed term contracts which is equal to or less than eight weeks; or

(b) apprentices who are retained in employment for more than six months after the completion of their apprenticeship

5. Apprentices covered by the Award who are engaged in 'sugar mills' are entitled to redundancy pay if they are "**retained** in employment for more than six months after the completion of their apprenticeship" (clause 16.6(b) of the current award). The term 'retained' in the current award requires that the apprentice be be continuously employed during the six month period; not terminated at the conclusion of their apprenticeship and, say, re-employed two months later.

6. The replacement of the word 'retained' with 'engaged' in proposed clause 16.5(c) creates uncertainty about the meaning of the provision. For example, would the six-month period need to be one continuous period? If not, the six month period could extend for a very lengthy period beyond the end of the apprenticeship, which would be very different to the current entitlement.

7. Accordingly, the wording in clause 16.6 of the current award should be retained, in lieu of the wording in clause 16.5 of the Draft Determination.

Retention of other exclusions in section 123 of the FW Act

8. Clause 16.6 of the current award only affects two of the three exclusions in s.123(1)(a) of the FW Act and does not affect any of the other exclusions in s.123.

9. By re-framing the industry-specific redundancy entitlement as a positive obligation as opposed to the current limitation on the application of only two of several exclusions in s.123, the Draft Determination arguably disturbs other exclusions, including those for employees of 'small business employers' and for employees whose period of continuous service with the employer is less than 12 months.

10. Accordingly, the wording in clause 16.6 of the current award should be retained, in lieu of the wording in clause 16.5 of the Draft Determination.