



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

13 February 2015

The Associate to Honourable Justice Ross AO, President
Fair Work Commission
PO Box 1994
MELBOURNE VIC 3001

Via Email: amod@fwc.gov.au

Dear Associate

Re: AM2014/249 – Alleged Inconsistencies with the NES, Draft Determination Wine Industry Award 2010

Introduction

The South Australian Wine Industry Association (SAWIA) is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture.

SAWIA is a registered association of employers under the South Australian *Fair Work Act 1994* and is also a transitionally recognised association under the *Fair Work (Registered Organisations) Act 2009*.

SAWIA welcomes the opportunity to provide a submission on the Draft Determination to give effect to Decision [2014] FWCFB 9412 by the Full Bench on 23 December 2014 to vary Clause 31.2(b) of the Wine Industry Award 2010.

Draft Determination - additional annual leave for seven day shiftworkers

In the decision, the Full Bench stated the following:

“[88] We consider the following modern award provisions to be inconsistent with s.87(2) because, in respect of the entitlement conferred by s.87(1)(b)(i) to an additional week’s annual leave for employees covered by a modern award who are defined or described as shiftworkers, each of them:

- (1) requires a minimum of 12 months’ service before the additional entitlement applies; and*
- (2) provides that the additional entitlement accrues on a monthly and not a daily basis.”*

The Draft Determination varies Clause 30.2 (now renumbered as Clause 31.2.) and would replace existing Clause 31.2(b) with a reworded Clause 31.2(b) and insert a new Clause 31.2(c).

SAWIA does not oppose the insertion of reworded Clause 31.2(b) which essentially removes the 12 month qualifying period.

However, SAWIA is unable to support the inclusion of new Clause 31.2(c). We are concerned that the proposed wording of Clause 31.2(c) does more than simply clarify that the additional leave entitlement accrues on a daily basis. Instead it appears to expand eligibility to the additional annual leave entitlement, beyond what is prescribed in Clause 31.2(a).

According to the Clause 31.2(a), the additional week of annual leave is provided to a “shiftworker” defined as “a seven day shiftworker who is **regularly** rostered on Sundays and public holidays”.
[Our emphasis]

Hence, in order to obtain the additional annual leave entitlement the employee must satisfy all of the requirements in 31.2(a):

- Being a seven day shiftworker
- Regularly rostered on Sundays
- Regularly rostered Public holidays

Proposed Clause 31.2(c) states that “An employee engaged for only part of a month as a seven day shiftworker will accrue leave for the part month proportionate to the leave prescribed in clause 31.2(b).”

The Clause seems to suggest that even where an employee is engaged as a seven day shiftworker for a period of less than 1 month, the employee will accrue an entitlement to the additional period of annual leave. This would appear to be inconsistent with the eligibility criteria in Clause 31.2(a) which requires the employee to be a seven day shiftworker who is “**regularly** rostered on Sundays and public holidays”.

In the wine industry, the vintage period is the peak period of operations. During this period some wine industry employers move to a seven day shift roster. However, the period over which the seven day shift operates varies from employer to employer; some employers may complete vintage in less than a month, whereas other employers may be in vintage for 12 weeks or more.

SAWIA submits that an employee required to work seven day shifts a short period of time, such as less than a month, could not be viewed as being “regularly rostered” on Sundays and public holidays and accordingly would not meet the definition of a “shiftworker” in Clause 31.2(a). Yet proposed Clause 31.2(c) suggests that even very short engagements as a seven day shiftworker would see the employee qualify for the additional leave entitlement.

An alternative variation

It should be noted that in relation to the additional entitlement to annual leave for shiftworkers at least 22 Modern Awards¹ contain a much more condensed and straightforward provision

¹ Health Professionals and Support Services Award 2010, Clause 31.1; Hospitality Industry (General) Award 2010, Clause 34.1; Meat Industry Award 2010, Clause 37.2. Ports, Harbours and Enclose Water Vessels Award 2010, Clause 22.3; Social, Community, Home Care and Disability Services Industry Award 2010; Sugar Industry Award 2010, Clause 33.2; Telecommunications Services Award 2010, Clause 23.2; Textile, Clothing, Footwear and Associated Industries Award 2010, Clause 41.2; Clerks – Private Sector Award 2010, Clause 29.2; Banking, Finance and Insurance Award 2010, Clause 24.2; Animal Care and Veterinary Services Award 2010, Clause 26.2; Airline Operations – Ground Staff Award 2010, Clause 34.4; Aged Care Award 2010, Clause 28.2; Electrical Power Industry Award 2010, Clause 27.2; Fast Food Industry Award 2010, Clause 28.2; Gas Industry Award 2010, Clause 25.1; Pharmacy Industry Award 2010, Clause 29.2; Plumbing and Fire Sprinklers Award 2010, Clause 34.1, Rail Industry Award 2010, Clause 24.2; Registered and Licensed Clubs Award 2010, Clause 30.1; Restaurant Industry Award 2010, Clause 35.1; Salt Industry Award 2010, Clause 25.2.

by simply providing a shiftworker definition and stating that a shiftworker as defined is entitled to an additional week of annual leave and then provides the definition. The Modern Awards referred to above do not specify the accrual rate for the additional leave entitlement.

SAWIA submits that the inconsistency with the NES in Clause 31.2 of the Wine Industry Award 2010 referred to by the Full Bench in Decision [2014] FWCFB 9412, could be addressed in alternative manner by simply deleting Clause 31.2(b).

Neither Clause 31.2(b) nor the proposed Clause 31.2(c) is instrumental to the operation of Clause 31.2. As demonstrated by the other Modern Awards referred to above, for the purposes of the additional leave entitlement for shiftworkers it would be sufficient for Clause 31.2 to contain only the shiftworker definition.

SAWIA therefore submits that the Wine Industry Award 2010 be varied as follows:

1. By deleting Clause 31.2(b) in its entirety.

Accordingly Clause 31.2 would read as follows:

31.2 Definition of a shiftworker

- (a) For the purposes of the additional week of annual leave provided for in s.87(1)(b) of the Act, a **shiftworker** is a seven day shiftworker who is regularly rostered on Sundays and public holidays.

Yours sincerely

HENRIK WALLGREN
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