

10 March 2016

Fair Work Commission
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Exposure Draft of the Sugar Industry Award 2016

The Australian Sugar Milling Council (ASMC) is the peak industry organisation for raw sugar milling in Australia. The ASMC represents some 95 per cent of Australian raw sugar production through our 6 member companies owning 20 sugar mills. In total, there are 24 sugar mills in Australia, owned by eight companies.

The Milling Council submits the attached table of responses to the questions listed in The Fair Work Commission Exposure Draft Sugar Industry Award 2016.

The exposure draft for the Sugar Industry Award 2016 was published on 15 January 2016. The Fair Work Commission has requested each interested party to file in the Commission comprehensive written submissions on the technical and drafting issues related to exposure drafts in Group 3.

ASMC Member companies employ permanent and seasonal workers who are covered by enterprise agreements that are underpinned by the Sugar Industry Award 2010 [MA000087] and therefore have a direct interest in the Exposure Draft of the Sugar Industry Award 2016.

Please contact the ASMC should you have any questions regarding this submission.

Yours sincerely



Dominic V Nolan
Chief Executive Officer

Exposure Draft for Sugar Industry Award 2016 – ASMC Recommended Changes

Page & Part No	Question	Response
Page 4 Part 4 Coverage	Parties are asked to confirm the currency of the terms “Cane Protection and Productivity Boards” and “Bureau of Sugar Experiment Stations”.	Prod Services. Referred to in the BKN as Burdekin Productivity Service but generally referred to as Prod Services. Each Region’s name prefixes “Productivity Services”. “Bureau of Sugar Experiment Stations” is known as Sugar Research Australia.
Page 5 Part 4 Clause 3.2 Coverage	Parties are asked to consider whether the terminology in clauses 3.2(b)–(e) should be consistent with the definitions in Schedule I—Definitions.	Terminology applied in Clause 3.2 and Schedule I Definitions should be consistent. Suggested terminology is: Clause 3.2 (b) Sugar Milling Clause 3.2 (c) Sugar Refineries Clause 3.2 (d) Sugar Distilleries Clause 3.2 (e) Bulk Sugar Terminals
Page 9 Clause 6.2 Part-time Employment	Part-time employment provisions may be affected by AM2014/196 Parties are asked whether a provision that limits the maximum number of hours of a part-time employee to less than 38 is permissible.	FWA limits the number of hours to the lessor of 38; or the employee’s ordinary hours of work in a week. For consistency (refer to casual employment below) recommend that the maximum number of ordinary hours of work permissible for a part-time employee is 38 hours per week.
Page 9 Clause 6.3 Casual Employment	Casual employment provisions may be affected by AM2014/197. The issue of whether the casual loading applies to piecework rates raised by the Fair Work Ombudsman has been referred for consideration of the Casual Employment Full Bench in AM2014/197.	Casual employees are required – i.e. casual watchmen, Technical Field department employees.

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Page 16 Clause 10 Ord hrs of work & rostering other than shift workers and Page 41	Field Sector: Parties are asked to comment on how clause 10.2(c) interacts with clause 25.2(b), and what the correct rate is for field sector employees working on Sundays – see Correspondence from the Fair Work Ombudsman.	<p>Clause 10.2(c) states the payment when ordinary time is worked on a Saturday and Sunday – i.e. T1/2.</p> <p>Clause 25.2(b) states the payment when working on rostered days off being Saturday and Sunday – T1/2 and DT payment applies.</p> <p>There is a clear difference between the two clauses however additional wording is required in Clause 25.2(b) to clarify that the payment applies to overtime.</p> <p>No change required the Award is clear, 10.2 (c) is a under heading Ordinary Hours of work while 25.2(b) is under heading Overtime.</p> <p>It is clear which entitlement applies, the user has to take note of which heading they are reading down from.</p>
Page 20 Meal Provisions	Parties are asked to clarify whether the award should provide an alternative to the employer supplied overtime meal for the field sector. As the award is currently drafted, the milling, distillery, refinery and maintenance and bulk sugar terminal operations sectors provide a meal allowance as an alternative to the provision of a meal.	<p>For standardisation and consistency, recommend that all sectors are offered the payment of a meal allowance as an alternative to the provision of the meal.</p> <ul style="list-style-type: none"> • Milling • Distillery • Refining & maintenance • Bulk Sugar Terminal • Field <p>Consider rewording clause 11.5 (a) “A day worker who is required to continue working at their usual work for more than one hour after the fixed finishing time must be allowed:” to read “after their scheduled hours of work”.</p>
Page 25 Junior Wage	Parties are asked to clarify if junior employees receive only the relevant percentage of wage and/or expense related allowances in clause 16.	Sugar pays according to the job actually being done. Junior wage or expense related allowances are not paid.
Page 31 Hot Work, suggest alternative terms if required	Parties are asked whether the terms “spelling time” and “gang” should be defined or replaced with more contemporary terminology.	<p>Suggest that “Spelling time” is replaced by “recovery time”.</p> <p>“Gang” replaced by “crew”.</p>

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Page 32 Hot Work	It is unclear what allowances are not payable when this allowance is paid. Parties are asked to specify the clauses that do not apply when this allowance applies.	Clause 16.1 (a) Applying obnoxious substances Clause 16.1(b) Asbestos, Clause 16.1(c) Bagasse bin, Clause 16.1(d) Boiler cleaning – engine driver, Clause 16.1(e) Brick cutting, Clause 16.1(f) Carting and/or handling cement, Clause 16.1(g) Chimney Stacks, Clause 16.1(h) Chipping rollers, Clause 16.1(i) Cleaner, greaser or oiler, Clause 16.1(j) Cleaning dirty machinery, Clause 16.1(k) Cleaning molasses tanks, Clause 16.1(l) Cleaning under carrier, Clause 16.1(m) Confined spaces, Clause 16.1(n) Employees handling building blocks, Clause 16.1(p) Grinding Shredder hammer, Clause 16.1(q) Handling molasses, Clause 16.1(r) Height money, Clause 16.1(s) High pressure cleaning machines, Clause 16.1(u) Crushing season – juice superheaters, Clause 16.1(v) Insulation work Clause 16.1(w) Lagging steam pipes Clause 16.1(x) Operating jackhammers etc, Clause 16.1(y) Pressure welding allowance, Clause 16.1(z) Re-bagging lime, Clause 16.1(aa) Repair work, Clause 16.1(bb) Shot blast or sand blast, Clause 16.1(cc) Spot welding mill rollers, Clause 16.1(dd) Work in rain, Clause 16.1(ee) Work in water and cleaning drains.
Page 32 Dust Allowance	Parties are asked to clarify whether the term “in addition to the rates prescribed” refers to the allowances in 16.1(v)(i) and (ii) or the employee’s hourly rate.	For clarity, confirm that the wording “In addition to the rates prescribed,” should be added to clauses 16.1(v) (i) and (ii).

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Page 35 Seasonal Worker	Parties are asked to clarify the effect of clauses 17.3(b) and (c) in respect of the hourly rates defined in Schedule D.2, which are based on a 38 hour week.	The hourly pay rates defined in Schedule D.2 are calculated on a 38 hourly divisor hence are applicable to those employees deemed to be seasonal as in Clause 17.3 (b) – 38 hour divisor. Pay rates for employees on 40 and 36 divisors are not accommodated.
Page 36 Absences from duty under an averaging system	Clause 17.4(c) is currently drafted "...will incur a proportion of the debit for the day, based upon the proportion of the working day that the employee was in attendance". Should it be drafted, as below, where the proportion of the debit is based on the proportion of the day the employee was NOT in attendance?	Clause should be drafted as shown below: An employee absent for part of a day (other than on annual leave, long service leave, public holidays, paid personal leave, workers compensation, paid compassionate leave, paid family leave or jury service) will incur a proportion of the debit for the day, based upon the proportion of the working day that the employee was not in attendance.
Page 41 Payment for working RDO, Saturday & Sunday	Parties are asked to comment on how clause 25.2(b) interacts with clause 10.2(c), and what the correct rate is for field sector employees working on Sundays. Should clause 25.2(b) refer to "overtime work" rather than "all work"? – see Correspondence from the Fair Work Ombudsman	Clause 10.2 (c) references ordinary time worked on a Saturday or Sunday. For clarity, clause 25.2 (b) should refer to <i>overtime work</i> rather than <i>all work</i> . Suggest the heading of Clause 25.2 reads "Payment for working overtime on Saturdays, Sundays or on Rostered Days Off".
Page 45 Nominal crushing season - shiftwork	Clause 26.9 provides that the roster system may be approved by the Fair Work Commission. Is there a legislative mechanism that provides for this?	There are recent changes to the FWA where if there is major change, employees who are impacted by the roster change are invited to give their views regarding the impact of the change (including any impact in relation to their family or caring responsibilities).
Page 49 Travel days	Parties are asked whether clause 27.6(c) requires clarification. This provision appears to have been taken from AN140048 - <i>Bulk Terminals Award - State 2003</i> .	Further clarification is required around the option being offered to convert 5 travel days to an additional 2% employer's superannuation contribution for the term of their employment. Eg are the 5 days converted annually; timing of conversion;
Page 53 – Dispute Resolution wording change	Clause 35.6 differs from the standard wording in that it says "safe and legal" instead of "safe and appropriate". Parties are asked whether this different wording should be maintained.	Recommend the wording "safe and legal" is maintained. Legal – authorised/lawful/permitted Appropriate – suitable/correct/fitting

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Page 108 – Training Programs not covered	Parties are asked to identify “ <i>any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997</i> ” that they consider should not be covered by this Schedule.	No training programs identified.
Page 114 – Training Packages	Parties are asked to review the packages listed to ensure the lists are complete and up-to-date.	Reviewed and listings are complete and up-to-date.
Page 119 Definitions used in coverage, also part of page 4	Parties are to consider whether the terminology in clauses 3.2(b)–(e), regarding the different sectors, should be consistent with the definitions in Schedule I—Definitions.	Refer to Item 1 above.