STRONGER TOGETHER
NATIONAL OFFICE
Level 10, 377-383 Sussex Street Sydney NSW 2000
T: (02) 8005 3333 F: (02) 8005 3300
E: members@awu.net.au W: www.awu.net.au
Members Hotline: 1300 885 653
Scott McDine National Secretary
THE AUSTRALIAN WORKERS' UNION
ABN 28 853 022 982

Fair Work Commission
Terrace Tower, 80 William Street
East Sydney NSW 2011
By email: amod@fwc.gov.au

6 May 2016

Re: AM2014/247 AWU reply submissions on the Exposure Draft for the *Sugar Industry Award 2016*

1. On 23 March 2016 the President, Justice Ross published a Statement which requires reply submissions on drafting and technical issues for Group 3 exposure drafts to be filed by 5 May 2016.

2. The AWU's submissions in reply to the following employer group submissions regarding the Exposure Draft for the *Sugar Industry Award 2016* (Exposure Draft) as published on 15 January 2016 appear below:

   - Australian Sugar Milling Council (ASMC);

   - National Farmers' Federation (NFF);

   - Australian Business Industrial and The NSW Business Chamber Ltd (ABI); and

   - Australian Industry Group (AIG).

ASMC

3. Clause 3.2: We agree with reference to "Cane Production and Productivity Boards" being replaced with "Productivity Services" and "Bureau of Sugar Experiment Stations" being replaced with "Sugar Research Australia".

4. Clause 6.2 (e) (ii): We are opposed to the maximum part-time ordinary hours for refinery employees being increased from 32 per week to 38. This is obviously a substantive change that would require an evidentiary case in support of the variation. We see no impediment to an award referring to a

maximum of less than 38 hours per week and there are awards with full-time ordinary hours of less than 38.[1]

5. Clause 10.2 (c): We accepted at paragraph [19] of our submission dated 17 April 2016 that clause 10.2 (c) refers to ordinary time rates and clause 25.2 to overtime.

6. Clause 11.5 (c): We are not necessarily opposed to the insertion of a meal allowance for field sector employees but it should first be confirmed that this provision has not deliberately been omitted in favour of the provision of a meal.

7. Clause 16.1 (t) (iii): We are not opposed to the amendments suggested.

8. Clause 16.1 (t) (iv): The allowances not payable are 16.1 (d), 16.1 (m), 16.1 (aa) and 16.1 (dd).

9. Clause 16.1 (v): We are not opposed to the amendments suggested.

10. Clause 17.3 (b) and (c): It appears the weekly rate in clause 15.1 needs to be used for the calculations involving a divisor of 36 or 40 as opposed to the hourly rates in Schedule D.2.

11. Clause 17.4: The current terminology is unclear but the logic is obviously that there is a balance and amounts would be deducted from the balance when an employee is absent from work. The whole clause may be improved if an hourly system is used as opposed to days. This would presumably involve hours being added in weeks where more than the 38 ordinary hours is worked and deducted when less than 38 ordinary hours are worked.

12. Clause 27.6 (c): We agreed at paragraph [36] of our submission dated 17 April 2016 that the effect of this provision needs to be clarified in the review process.

NFF

GENERAL POINTS

Commencement clause

[1] See clause 17.1 of the *Stevedoring Industry Award 2010* and clause 21.1 of the *Black Coal Mining Industry Award 2010*

13. Clause 1: There does appear to be some merit in the NFF's submission that the proposed wording could indicate that variations operate retrospectively and we are not opposed to the suggested amendment.

Definitions

14. Location of definitions: We are satisfied with the approach of including the definitions as a Schedule to the Exposure Drafts and don't believe any amendments are necessary.

15. Standard rate: The NFF's point is not entirely clear because references to a percentage of the "standard rate" have been replaced with dollar amounts throughout the Exposure Draft. It appears sensible to retain the definition of the "standard rate" as a historical benchmark regarding how the amounts have been calculated.

NES

16. Clause 2: These provisions have already been debated and determined by the Full Bench on a general level.[2] We are particularly concerned at the NFF's proposal that the Exposure Draft be amended to state: "The NES and this award contain the minimum conditions that **apply** to the employment of employees covered by this award". This amendment would conflate the concept of an award "covering" employees and an award "applying" to employees. There is an important distinction between these terms because an award will often "cover" an employee but will not "apply" because an enterprise agreement is in operation.[3] The provisions in the Exposure Draft should not be amended.

Coverage

17. Clause 3: There is some merit to the amendments suggested by the NFF but it is not clear that they will make the Exposure Draft any clearer than the existing provisions.

Facilitative provisions

18. Clause 5: The inclusion of a facilitative provisions clause is another matter that has been debated and determined on a general level in earlier

[2] *4 yearly review of modern awards* [2014] FWCFB 9412 at [21] to [29]
[3] See s 57 of the *Fair Work Act 2009*

proceedings.[4] We see no need to depart from the general approach in this Exposure Draft.

AWARD SPECIFIC SUBMISSIONS

19. Clause 6.2: We disagree with the NFF's submission. Section 139 (1) (c) of the *Fair Work Act 2009* (the Act) permits an award to include terms about hours of work. More importantly, section 147 of the Act states an award must include terms specifying the ordinary hours of work for each type of employment.

20. Clause 6.3 and 12.3: The casual loading is clearly included in the piecework calculation given the casual loading forms part of a casual employee's ordinary time rate.

21. Clause 10.3 (e) (iii): We are not opposed to the suggested addition of an extra dot point.

22. Clause 11.5 (c): We refer to our submission above.

23. Clause 14: We rely upon the amendments proposed at paragraph [4] to [12] of our submission dated 17 April 2016.

24. Clause 25: We have previously accepted that the rates for ordinary time on Saturday and Sunday for field sector workers appear in clause 10.2 (c). However, we don't accept that overtime will only be payable after an employee has worked 152 hours over a 4 week period. The ordinary hours have to be fixed under clause 10.2 (a) and hours in addition to these will be overtime, even if the 152 hours over a 4 week period has not been worked. This is confirmed by clause 25.1 (c) of the Exposure Draft.

25. Schedule D: We refer to our submission directly above, it is not correct that overtime is only payable if in excess of 152 hours has been worked in a 4 week period.

ABI

26. Clause 3.2 (a): We have agreed to these terms being updated above.

27. Clause 3.2 (f): Any amendments to this clause need to be carefully considered to ensure existing coverage is not disturbed. Under the *Sugar*

[4] *4 yearly review of modern awards* [2014] FWCFB 9412 at [37] to [43]

Industry Award 2010 (the Award) it appears the definitions primarily relate to the different streams in the Award as opposed to coverage.

28. Clause 6.2 (e) (ii): ABI are correct, there is no legislative impediment to the ordinary hours specified in the Exposure Draft for part-time employees.

29. Clause 10.2 (c) and 25.2 (b): We have agreed in relation to the operation of these clauses above.

30. Clause 11.5 (c): We rely on our submission above.

31. Clause 16.1 (f) (ii) and 16.1 (r): There is no need to limit these entitlements by increasing the prescribed amounts via rounding. Given a weighing process or measurement is required either way - the fact that a figure is not rounded makes little practical difference.

32. Clause 16.1 (t) (iv): We rely upon our submission above.

33. Clause 17.3 (b) and (c): We are not opposed to the inclusion of additional rate schedules.

34. Clause 17.4 (c): We refer to our submission above.

35. Clause 26.9 (a): If the word “approved” is changed to “determined” it appears there would be jurisdiction for the Commission to resolve the matter under s 739 of the Act.

36. Clause 35.6: We agree with this amendment – courts and tribunals should decide what is “legal” not a manager allocating work.

AIG

37. Clause 10.2 (d) (iii) and 10.2 (e) (iii): We agree to these amendments.

38. Clause 11.1 (a) We disagree with AIG’s interpretation and don’t think any amendment is necessary.

39. Clause 11.1 (a), (c), (d) and (e): We accept these provisions are confined to day workers under clause 30.1 of the Award and are not opposed to this being clarified in the Exposure Draft.

40. Clause 11.1 (c): We are not opposed to the current words being inserted.

41. Clause 11.5 (c): We are not opposed to this amendment on the basis it will reflect clause 30.3 of the Award.

42. Clause 12.2: We accept AIG's proposal reflects clause 38.3 of the Award. However, the reference to clause 20.1 (a) should be amended to clause 12.2.

43. Clause 12.3 (d) and (e): We are not opposed to these amendments.

44. Clause 13.1 (a): We are not opposed to this amendment.

45. Clause 17.3 (b) and (c): This issue is dealt with above. We are not opposed to additional tables being inserted or alternatively a note as proposed by AIG.

46. Clause 17.4: We agree, this is consistent with paragraph [8] of our submission dated 17 April 2016.

47. Clause 25.4 (a): We are not opposed to an amendment to reflect clause 31.4 (a) of the Award.

Stephen Crawford
SENIOR NATIONAL LEGAL OFFICER