

AWU MATERIAL FOLLOWING CONFERENCE ON 26 MAY 2016

During the Conference on 26 May 2016 the AWU undertook to subsequently confirm its position on a number of issues and to provide some additional material on others. This information is provided below with reference to the Item Numbers in the Commission's 'Summary of Submissions' document.

MATTERS WITHDRAWN

The AWU agrees to withdraw the following Items:

- 12
- 15
- 18
- 23
- 28
- 43
- 44
- 49

ADDITIONAL INFORMATION**Item 13 – Seasonal employees**

We note the Australian Sugar Milling Council is preparing a discussion paper concerning seasonal employment in the sugar industry.

However, in the meantime, in support of our argument that an employee engaged on a seasonal basis must still be guaranteed the ordinary hours of work of a full-time or part-time employee, we refer the parties to the following:

- Clause 11.2 of the *Alpine Resorts Award 2010*: "A seasonal employee may be engaged on either a full-time or part-time basis";
- Clause 10.5 (a) of the *Educational Services (Post-Secondary Education) Award 2010*: "A sessional employee is an employee engaged to work on a full-time or part-time basis for a specified period or periods of not less than four weeks or more than forty weeks in any calendar year";
- Clause 10.6 of the *Educational Services (Teachers) Award 2010*: "An employee may be employed for a fixed period of time for a period of at least

four weeks but no more than 12 months on either a full-time or part-time basis to...”

We further note that many leave entitlements under the NES are calculated by reference to an employee’s ordinary hours of work and that an award must allow for the determination of ordinary hours of work for every type of employment permitted by the award under s 147 of the *Fair Work Act 2009*.

Item 14 – Part-time refinery employees

Whilst the AWU strongly maintains there is no legal impediment to an award limiting ordinary hours to less than 38 per week, we have not been able to identify any logical or historical reason to retain the current restriction on part-time refinery employees working more than 32 ordinary hours per week.

On this basis, we propose that clause 6.2 (e) (ii) of the Exposure Draft be amended to read:

for refinery employees where the minimum engagement will be eight hours per week.

The effect of this amendment is that part-time refinery employees may agree to work a regular pattern of hours which average less than 38 ordinary hours per week as per clause 6.2 (a) of the Exposure Draft.

Item 50 – calculation of milling hourly rates where divisors of 36 or 40 are used

The AWU agreed to draft a Note to alert users that the hourly rates cited in the Schedule are not necessarily applicable to milling employees paid under clause 17.3 of the Exposure Draft.

However, we note an additional issue that requires consideration is the interaction between clause 17.3 and the National Minimum Wage. This arises because the C14 rate in the Exposure Draft reflects the National Minimum Wage. This is the minimum rate payable to a Milling general operator – level 2 under Schedule B.1.1.

Clause 17.3 (c) of the Exposure Draft seemingly prescribes that all employees working in sugar mills are paid an hourly rate of only \$16.42 ($\$656.90/40 = \16.42) during the nominal crushing season of 26 weeks. Given the definition of “seasonal employee” in Schedule I allows for the engagement of employees for only the nominal crushing season – the Exposure Draft appears to permit an employer to pay below the National Minimum Wage for the duration of a seasonal employee’s employment.

Subject to the resolution of this issue, we consider it may assist to insert a footnote to the heading “Minimum hourly rate” in clause 15.1 of the Exposure Draft with the Note below the table then reading:

The minimum hourly rate for sugar milling employees is determined by dividing the Minimum weekly wage by 36, 38 or 40 as prescribed in clause 17.3. The rates above only reflect the calculation for a 38 hour week.

Similarly, a Note in the following terms could be inserted below the heading ‘Milling, distillery, refinery and maintenance employees’ appearing in Schedule D.2 of the Exposure Draft:

NOTE: *The minimum hourly rate for sugar milling employees is determined by dividing the Minimum weekly wage by 36, 38 or 40 as prescribed in clause 17.3. The rates below only reflect the calculation for a 38 hour week.*