



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—plain language re-drafting—standard clauses

(AM2016/15)

SUGAR INDUSTRY AWARD 2010

[MA000087]

Sugar industry

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER HUNT

PLACE, DATE OF SIGNING

4 yearly review of modern awards—plain language re-drafting—standard clauses—Sugar Industry Award 2010.

A. Further to the Full Bench decision [\[\[2019\] FWCFB XXXX\]](#),¹ issued by the Fair Work Commission on XX XXXXXX 2019, the above award is varied as follows:

1. By deleting clause 16 and inserting the following:

16. Redundancy

NOTE 1: Redundancy pay is provided for in the [NES](#). See sections 119–123 of the [Act](#).

NOTE 2: Clause 16.4 supplements the [NES](#) by providing additional benefits to bulk terminal employees. Clause 16.5 supplements the [NES](#) by providing entitlements to certain employees in sugar mills excluded from redundancy pay under the [NES](#) by section 123(1)(a) of the [Act](#).

16.1 Transfer to lower paid duties on redundancy

- (a) Clause 16.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:

¹ See also [\[2019\] FWCFB 5409](#), [\[2018\] FWCFB 7447](#), [\[2018\] FWCFB 4704](#), [\[2018\] FWCFB 4177](#), [\[2018\] FWCFB 3009](#), [\[2017\] FWCFB 5258](#), [\[2017\] FWCFB 4419](#)

- (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
 - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 16.1(c).
- (c) If the employer acts as mentioned in clause 16.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

16.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 16 or under sections 119–123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

16.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 16.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 16.3(b).
- (d) An employee who fails to produce proof when required under 16.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clauses 15.2 and 15.3.

16.4 Bulk terminal employees

- (a) Clause 16.4 applies to an employee engaged at a bulk terminal, unless the employee is excluded from redundancy pay under the [NES](#) by sections 121(1), 123(1), 123(4)(a) and 123(4)(d) of the [Act](#).
- (b) Subject to paragraphs (f) and (g), an employee is entitled to be paid redundancy pay by the employer if:
- (i) the employee's employment is terminated by reason of redundancy; and
 - (ii) the employee's period of continuous service with the employer on termination is at least 12 months.
- (c) In clause 16.4 **continuous service** the same meaning as in section 119 of the [Act](#).
- (d) **Redundancy pay**
- (i) Redundancy pay is calculated in accordance with section 119(2) of the [Act](#).
 - (ii) The amount of redundancy pay in clause 16.4(b) is the greater of either:
 - The redundancy pay under section 119(2) of the [Act](#); or
 - 2.5 weeks' redundancy pay for each year of continuous service up to a maximum of 52 weeks of redundancy pay.
 - (iii) The maximum payment under clause 16.4 will not exceed 52 weeks of ordinary time pay excluding any accrued annual leave, sick leave, long service or any payment instead of notice as set out in clause 15—Termination of employment.
- (e) **Additional redundancy benefits**

If an employee's employment is terminated by reason of redundancy then, in addition to any redundancy pay the employee is entitled to under clause 16.4(d), the employee is entitled to other benefits as follows:

- (i) If the employee is at least 45 years old or has at least 10 years' continuous service with the employer on termination, then the employee will be entitled to payment for all accrued sick leave.
- (ii) If the employee is less than 45 years old and has less than 10 years' continuous service with the employer on termination, then the employee will be entitled to 50% payment of all accrued sick leave.
- (iii) If the employee has more than 12 months' continuous service with the employer on termination, then the employee will be entitled to an amount

of up to \$1,000 towards retraining at a recognised institution on the production of such invoices.

- (iv) A service to assist the employee in preparing job applications, CVs and the like.
- (v) Access to a financial planning adviser—this will be considered upon application from the employee.
- (f) The terms of section 120 of the [Act](#) apply as if section 120 referred to ‘paragraph (d)’ rather than ‘section 119’.

NOTE: Under section 120 of the [Act](#) the Fair Work Commission can determine that the amount of redundancy pay under the [NES](#) is to be reduced if the employer obtains other acceptable employment for the employee or cannot pay that amount. Paragraph (f) applies these arrangements also to redundancy pay under clause 16.4.

- (g) The terms of section 122 of the [Act](#) apply as if section 122 referred to ‘clause 16.4’ rather than ‘this Subdivision’ and to ‘paragraph (d)’ rather than ‘section 119’.

NOTE: Under section 122 of the [Act](#) transfer of employment situations can affect the obligation to pay redundancy pay under the [NES](#) and the Fair Work Commission can make orders affecting redundancy pay. Paragraph (g) applies these arrangements also to redundancy pay under clause 16.4.

- (h) The maximum payment under clause 16.4 will not exceed 52 weeks of ordinary time pay excluding any accrued annual leave, sick leave, long service or severance payment as set out in clause 15—Termination of employment.

16.5 Apprentices and fixed term employees in sugar mills

- (a) Clause 16.5(d) applies to a fixed-term employee in a sugar mill, where the employee is engaged on a series of consecutive contracts where the period of actual service covered by the series of contracts is more than 12 months.
- (b) For the purposes of clause 16.5(a), the continuity of an employee’s service with an employer will not be broken where there is a period of 8 weeks or less between fixed term contracts.
- (c) Clause 16.5(d) applies to an apprentice in a sugar mill who is engaged in employment for more than 6 months after the completion of their apprenticeship.
- (d) **Redundancy pay**
 - (i) An apprentice or fixed-term employee in a sugar mill is entitled to notice of termination or payment instead of notice in accordance with section 117 of the [Act](#).

- (ii) An apprentice or fixed-term employee in a sugar mill is entitled to redundancy pay in accordance with section 119(2) of the [Act](#).

2. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from [date of operation]. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after [date of operation].

PRESIDENT