



The Australian Industry Group
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31 March 2020

Deputy President Asbury
Fair Work Commission
Level 14/66 Eagle Street
Brisbane City Qld 4000

Dear Deputy President,

AM2017/56 - 4 yearly review of modern awards – Sugar Industry Award 2010

We refer to the above matter, and to the Statement issued by the Full Bench issued on 24 March 2020 ([2020] FWCFB 1550) (**Statement**).

The Statement, at paragraph [6] expressed the Full Bench's provisional view that clause 40.1 of the *Sugar Industry Award 2010* be varied to include the following note:

NOTE: The rates for ordinary hours in clause 40.1 are calculated by dividing the minimum weekly rate by 38. Where an averaging system is worked in accordance with clause 23.3 so that ordinary hours which are greater than 38 are worked in the nominal crushing season (or other period) and ordinary hours which are less than 38 are worked in the nominal slack season (or other period), the minimum hourly rate for ordinary hours will be no less than the minimum weekly rate divided by the actual ordinary weekly hours worked in the relevant season or period.

We understand that, the purpose of the note is to resolve the potential inconsistency between an averaging arrangement which allows sugar mill employees to be paid an hourly rate equal to the minimum weekly rate divided by 40 and a provision first inserted into the 1 June 2016 exposure draft which prohibits the average rate to be less than the relevant minimum hourly rate divided by 38.¹

As the latter clause has not been included in the current Award, it is unnecessary to include the above Note.

The Statement also expressed the Full Bench's provisional view that the following note be added to cl. 19.1 and Schedule D.1 of the exposure draft:

NOTE: The rates for ordinary hours in clause 19.1 and in tables D.2.1 and D.2.3 are calculated by dividing the minimum weekly rate by 38. Where an averaging system is worked in accordance with clause 15.3 so that ordinary hours which are greater than 38 are worked in the nominal crushing season (or other period) and ordinary hours which are less than 38 are worked in the nominal slack season (or other period), the minimum hourly rate for ordinary hours will be no less than the minimum weekly rate divided by the actual ordinary weekly hours worked in the relevant season or period. All of the penalty rates in the tables in D.2 are calculated based on dividing the weekly ordinary rate by 38.

Ai Group expresses concern that this note would not adequately deal with the issue first raised in Ai Group's [14 April 2016 Submission](#) and sought to be resolved through the consent position reached with the Australian Workers' Union and other parties, as reflected in the [final consent position](#) communicated to the Commission on 25 September 2018.

The Note proposed for inclusion in the exposure draft is potentially confusing as the words 'actual ordinary weekly hours' appear nowhere else in the award and are undefined. Moreover, the

¹ [2019] FWCFB 1980, [43] – [51].



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requirement for the minimum hourly rate for ordinary hours to be no less than the “minimum weekly rate divided by the actual ordinary weekly hours worked in the relevant season or period” potentially gives rise to unintended results, particularly where the actual ordinary hours worked in a week are very small.

Ai Group respectfully requests that the parties be afforded the opportunity to ventilate these issues in a Conference with the Commission as originally proposed in paragraph [51] of its 26 March 2019 Decision ([2019] FWCFB 1980).

Due to the significant taxing of both the Commission’s and the parties’ resources as a result of the COVID-19 pandemic, we recommend that a generous timeframe be provided to enable discussions to take place in the intervening period and that the matter be listed for teleconference in late April.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hamish Harrington', written in a cursive style.

Hamish Harrington
Workplace Relations Policy Adviser