

Fair Work Commission  
Level 10, Terrace Tower, 80 William Street  
East Sydney NSW2011  
By email: amod@fwc.gov.au

21 November 2016

Dear Associate,

**AM2014/197 – Casual Employment – Wine Industry Award 2010**

We refer to the matter above and the proposal of the South Australian Wine Industry Association (SAWIA) to reduce the minimum engagement period for casual employees under the *Wine Industry Award 2010*.

We seek permission to file the attached submission in response to the Directions of the Full Bench on 1 September 2016. An extension was granted to the Australian Workers' Union (AWU) on 25 October 2016, however we were unable to meet that date.

We have contacted United Voice and the SAWIA regarding this submission. United Voice have no objection to our filing. The SAWIA note our initial extension as well as the expiration of 3 weeks, and will leave it to the Commission to determine whether our submission can be accepted.

Please direct any correspondence to roushan.walsh@nat.awu.net.au or (02) 8005 3316 in relation to this matter.

Yours faithfully,



Roushan Walsh  
National Legal Officer  
The Australian Workers' Union

## IN THE FAIR WORK COMMISSION

Matter No: AM2014/197

Section 156 – 4 yearly review of modern awards – Casual employment – Wine Industry Award 2010

### SUBMISSION OF THE AUSTRALIAN WORKERS' UNION (AWU) REGARDING PROPOSED VARIATION TO THE WINE INDUSTRY AWARD

21 November 2016

#### BACKGROUND

1. The South Australian Wine Industry Association (SAWIA) has sought to reduce the minimum engagement period for casual employees in the *Wine Industry Award 2010* ('the Award') from four to two hours.
2. The AWU is opposed to this claim, and have filed submissions and evidence on 22 February 2016, including statements from three AWU Organisers<sup>1</sup> and documentary evidence authored by IbisWorld.<sup>2</sup>
3. The AWU's closing submissions in response to this claim appear below.

#### SUMMARY OF SAWIA CASE

4. The reasons for the SAWIA claim are outlined from page 12 to 16 of its submissions dated 12 October 2015. In summary, the reasons identified are:
  - 4.1. Additional casual jobs could be provided in cellar door sales if the minimum engagement was only two hours;
  - 4.2. There is a financial risk associated with having to cancel work due to heavy rain but still being required to pay casual employees for four hours' work;
  - 4.3. Some tasks in the cellar take two hours or less so extra casual employees could be hired to perform these tasks; and
  - 4.4. The four-hour minimum engagement is higher than that in other awards such as the *Horticulture Award 2010*.

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<sup>1</sup> Exhibit 182, Statement of Adam Algate 18 February 2016 ('*Algate Statement*'); Exhibit 183, Statement of Ron Cowdrey 18 February 2016 ('*Cowdrey Statement*').

<sup>2</sup> IbisWorld Industry Report C1214 'Wine Production in Australia' (2015).

## SUMMARY OF AWU RESPONSE

5. The current minimum engagement period of four hours forms part of a fair and relevant safety net of terms and conditions in the wine industry. The SAWIA have not shown that a reduction is necessary under the legislative format of the 4-yearly review.<sup>3</sup>
6. The documents before the Award Modernisation Full Bench and subsequent decision reveal that the minimum engagement has already been carefully considered and determined.<sup>4</sup>
7. The SAWIA's own evidence suggests that casual employees are already overwhelmingly utilised in cellar doors.<sup>5</sup> This practice is confirmed in the evidence of Adam Algate an AWU official, who also reports an increase in casualisation in recent years.<sup>6</sup> In this context, the logic that a reduced minimum engagement period is necessary to create additional casual employment opportunities in cellar doors lacks merit.
8. The real risk of rainfall during harvest appears to be low to non-existent in the wine industry.<sup>7</sup> The SAWIA seek to establish otherwise on the evidence of just two operators of Tasmanian wineries.<sup>8</sup> The applicability of this evidence is clearly geographically limited, and even in Tasmania rainfall is reported to be significantly below average for the last 19 years.<sup>9</sup> Even if the SAWIA's evidence were accepted, Tasmania as a wine region makes up only a small fraction of the Australian wine industry.<sup>10</sup>
9. The evidence of one SAWIA witness<sup>11</sup> identifying two-hour tasks currently performed by full-time employees in the cellar<sup>12</sup> is insubstantial to support the SAWIA's proposed variation. Similarly, the evidence of just three SAWIA witnesses identifying two-hour tasks in the cellar door is insubstantial to support

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<sup>3</sup> See paragraphs 34 to 59 where we consider the principles contained in the modern awards objective.

<sup>4</sup> See AWU Submission 22 February 2016 at [50] to [62].

<sup>5</sup> Ibid, at [65] to [67] – AWU summary of the SAWIA affidavits.

<sup>6</sup> See *Algate Statement* at [12] and [13].

<sup>7</sup> See *Algate Statement* at [4] and [5] and *Cowdery Statement* at [5] to [7].

<sup>8</sup> Exhibit 289 Affidavit of Jeremy Dineen 07 October 2015, excluding paragraph 12 (*'Dineen Statement'*) at [8]; Exhibit 181 Affidavit of Fred Peacock 19 October 2015 (*'Peacock Statement'*) at [9]. Mr Peacock and Mr Dineen refer to concerns about rainfall.

<sup>9</sup> See Bureau of Meteorology, *State of the Climate* (2016) <<http://www.bom.gov.au/state-of-the-climate/>> and refer to section on 'Rainfall'; and for Tasmanian figures see Australian Broadcasting Corporation, *Bureau figures show an average 20 per cent drop in rainfall in Tasmania during 2015* (2016) <<http://www.abc.net.au/news/2016-01-06/average-20-per-cent-drop-in-rainfall-for-tasmania/7071158>>.

<sup>10</sup> See SAWIA Submission 12 October 2015 at figure 3, on page 8.

<sup>11</sup> Exhibit 179 Statement of Anthony Grundel 08 October 2015 (*'Grundel Statement'*) at [8] to [9].

<sup>12</sup> See AWU Submission 22 February 2016, [75] to [79].

the proposed variation.<sup>13</sup> This evidence is examined in further detail below at paragraphs 27 to 33.

10. The SAWIA's selective<sup>14</sup> comparisons to other modern awards in "similar" industries<sup>15</sup> are inappropriate given the *Wine Industry – AWU – Award* and the *Wine and Spirit Industry (South Australia) Award (NAPSA)* were identified and agreed upon in the award modernisation proceedings, of which the SAWIA were a party. There is also authority for the proposition that it is 'too simplistic' to argue that conditions in one award should be lowered on the basis that other awards contain lower conditions.<sup>16</sup>
11. The effect of a two-hour minimum engagement period under this Award would be that most casual employees would be guaranteed less daily income than they if they were receiving payments of the Newstart Allowance.<sup>17</sup>
12. The wine industry is projected to recover over the next five years.<sup>18</sup>

## THE SAWIA'S WITNESS EVIDENCE

13. We have addressed the SAWIA's witness evidence in our submission of 22 February 2015. The AWU's position remains the same having now reviewed the oral evidence of those witnesses on 11 July 2016, 15 August 2016 and 17 August 2016.
14. We examine these witnesses in more detail below.

## Vineyard

15. In regards to the risk of payment for work due to inclement weather during harvest and/or pruning in the vineyard, the SAWIA led two witnesses based in Tasmania.
16. The evidence of Jeremy Dineen, Chief Winemaker and General Manager of Josef Chromy Wines, is that the risk of rain coupled with the four-hour minimum

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<sup>13</sup> Exhibit 180 Statement of Steven Todd 08 October 2015 ('*Todd Statement*'); *Grundel Statement*, Exhibit 299 Statement of Richard Van Ruth 12 October 2015 ('*Van Ruth Statement*').

<sup>14</sup> The *Manufacturing and Associated Industries and Occupations Award 2010* and the *Food, Beverage and Tobacco Manufacturing Award 2010* are conspicuously absent from the list of six comparable awards contained on page 13 and 14 of the SAWIA's submissions. These awards each provide a four-hour casual minimum engagement period.

<sup>15</sup> SAWIA Submission 12 October 2015, on page 13.

<sup>16</sup> *Stevedoring Industry Award 2010* [2015] FWCFB 1729 at [161]. In this decision a majority of the Full Bench held: '*On such a significant issue, it is just too simplistic to argue that the level of penalty rates should be reduced in the absence of such probative evidence and on the basis that the existing level of penalty rates in the Award are above those applying in other modern awards.*'

<sup>17</sup> AWU Submission 22 February 2016, [88] to [93].

<sup>18</sup> *Ibid*, at [94].

engagement period has resulted in harvest casuals not being called into work, and instead grapes are machine harvested. The figures cited by Mr Dineen show that prior to 2010 when the minimum engagement period was only three hours<sup>19</sup>, 60% of grapes were harvested by hand, whereas now only 35% are by hand.<sup>20</sup>

17. However there are no figures to show that the increase of machine harvesting is explained at all, or to what extent by one-hour increase to the minimum engagement period. Mr Dineen has simply marked two points in time and inferred a causal relationship between changes to the engagement period, and changes to harvesting practices.

18. There are other good explanations for the increase in machine harvesting that were not cited by the SAWIA, including that:

18.1. machine harvesting is more economic;<sup>21</sup> and

18.2. machine harvesting enables grapes to be picked on time when it is difficult to get enough hand pickers during harvest period.<sup>22</sup>

19. We submit that the real, or substantial reasons for the increase in machine harvesting are economic and practical ones. These incentives would remain if the minimum engagement period were reduced. Taking this, and the financial investment in machinery into account, we question whether the SAWIA's claim would result in employers' returning to handpicking grapes.

20. In his Statement, Mr Dineen also cites the numbers of days per pruning and harvest season that casual staff are sent home early, as well as the estimated cost of up to \$20,000 in wages for work not performed.<sup>23</sup> However, these figures only represent the days casuals are sent home earlier than expected, but not necessarily earlier than four hours.<sup>24</sup> Mr Dineen also states that casuals are never sent home earlier than four hours any more as casuals are no longer brought in when there is a risk of rain.<sup>25</sup> For these reasons, the \$20,000 in wages is misleading (as a figure representative of the past) and incorrect (as a figure representative of current costs).

21. In regards to both pruning and picking, we accept of course that there are safety concerns associated with rain (such as slipping and mishandling); and quality considerations (such as picking dry grapes to avoid diluting the harvest). However, it is incredibly difficult to accept that a reduction would be helpful in the circumstances claimed, given the following:

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<sup>19</sup> In 2009 the *Horticultural Industry (AWU) Award 2000* applied.

<sup>20</sup> See *Dineen Statement* at [9].

<sup>21</sup> Transcript 15 August 2016, Jeremy Dineen at PN2088 and PN2096.

<sup>22</sup> *Ibid*, at PN2104 to PN105.

<sup>23</sup> See *Dineen Statement* at [11].

<sup>24</sup> See Transcript 17 August 2016, Jeremy Dineen at PN2113.

<sup>25</sup> *Ibid*, at PN2115.

- 21.1. currently there are no instances of payment for work not performed, nor any evidence as to how often this has occurred in the past; and
- 21.2. there is no evidence regarding the negative impact the increase in machine picked grapes has had on the business either to production, wine quality, or sales; and
- 21.3. other than a 'preference' to increase handpicking<sup>26</sup> the increase has not been quantified; and
- 21.4. The investment in harvest machinery has already been made.
22. In regards to picking, if indeed casuals are not brought in on an occasion due to the risks associated with rain, there appears to be plenty of opportunity to hand pick those grapes on a day later in the week when the weather has cleared up. The importance of picking grapes at precisely the right time is not as crucial in cooler climates as Mr Dineen explains in cross examination:
- Again, in a cool climates, things are perhaps slightly different. I mean, our ripening is somewhat slower than warmer regions, hence the picking window might be two or three days or even a week. It's certainly not a matter of hours.*<sup>27</sup>
23. The evidence of Mr Dineen should also be considered in light of the stand down provisions of section 524 of the *Fair Work Act 2009* ('the FW Act') which allows for the standing down of employees in particular circumstances where the employee cannot be usefully employed and for which the employer cannot be reasonably held responsible. Mr Dineen was not aware of these provisions when his Statement was made.<sup>28</sup>
24. The evidence of Fred Peacock, Owner and Chief Executive Officer of Bream Creek Vineyards and Fred Peacock Viticulture and Consulting, was also examined in light of the stand down provisions. Mr Peacock in cross-examination readily accepted that section 524 would be of great assistance in terms of inclement weather<sup>29</sup> and in circumstances where machinery unexpectedly breaks down.<sup>30</sup>
25. Mr Peacock's evidence is that in some seasons the Bureau of Meteorology cannot provide a high degree of forecast certainty, and so harvesting begins but is sometimes stopped prematurely in as short a time as two hours. The window of opportunity can only be guaranteed for two hours due to the 'limit of the current

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<sup>26</sup> Ibid, at PN2098.

<sup>27</sup> Ibid, at PN2090.

<sup>28</sup> See Transcript 17 August 2016, Jeremy Dineen at PN2117.

<sup>29</sup> Transcript 11 July 2016, Fred Peacock at PN603. See also section 524(1)(c) of the FW Act.

<sup>30</sup> Ibid, at PN604. See also section 524(1)(b) of the FW Act.

local weather scans available'.<sup>31</sup> The implication flowing from stoppages is that crop gets written off, resulting in casuals losing harvesting work for a particular block. The current practice is to reduce the number of casuals in order to reduce the financial risk associated with stoppages.<sup>32</sup>

26. This evidence is insubstantial to support the SAWIA's proposal for the following reasons:

- 26.1. we submit that section 524 would have application in the weather circumstances identified by the SAWIA; and
- 26.2. there is no evidence of crop getting written off, or of production/business/sales more generally being negatively affected due to the minimum engagement period; and
- 26.3. the only mention of production potentially being affected by the minimum engagement period, was one occasion when Mr Peacock agonised over whether to get an additional staff member in at last minute, but instead decided to risk leaving the final rows of fruit.

### **Cellar Door and Cellar Hand work**

27. In regards to jobs that could be performed by casual employees in the cellar door, the SAWIA led three witnesses based in South Australia, each of whom held the position of General Manager. In regards to cellar-hand work, just one of these witnesses provided evidence.

28. Richard van Ruth of Primo Estate provides the evidence that more group bookings could be accepted if the minimum engagement period were reduced to cover 'Joseph tastings' – a tutored wine tasting that requires 1.25 - 1.75 hours of a single employee's labour.<sup>33</sup> The rationale is that large group bookings are regularly declined if they cannot be booked consecutively in order to make up four hours of work.<sup>34</sup>

29. The evidence given in cross-examination is even more astonishing, as Mr Van Ruth accepts the logic of the bookings policy – is that a booking is almost never made because a consecutive booking cannot be guaranteed.<sup>35</sup> There is no evidence of bookings being refused, and rather, this evidence is derived from Mr Van Ruth's own knowledge and from discussions with the Cellar Door Manager.<sup>36</sup> The AWU consider this to be an extreme and unlikely approach, and even if it

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<sup>31</sup> *Peacock Statement*, at [9].

<sup>32</sup> *Ibid*, at [11].

<sup>33</sup> *Van Ruth Statement*, at [5] to [6] and [11].

<sup>34</sup> *Ibid*, at [6].

<sup>35</sup> See Transcript 17 August 2016, Richard Van Ruth, PN2256 to PN2282.

<sup>36</sup> *Ibid*, PN2277 to PN2282.

were truly the practice of Primo Estate, it is unlikely to be the practice of other wineries. We note that, Steven Todd of Kay Brothers, provided similar evidence in his Statement with regard to the necessity of consecutive bookings.<sup>37</sup> However, Mr Todd's oral evidence was that in fact non-consecutive bookings are accepted, as 'It's only when they [(bookings)] conflict that you try and manipulate the time either side.'<sup>38</sup>

30. We submit that the evidence of both Mr van Ruth and Mr Todd is not sufficient to support a finding that the minimum engagement period is a genuine problem in cellar door operations in the strange way they have described.
31. Anthony Grundel, of Murray Street Vineyards, gives evidence in regards to cellar door and cellar hand-work. In his Statement Mr Grundel identifies some jobs that take two hours or less that could be offered to new casual employees if the two-hour minimum engagement were introduced. These include:
  - 31.1. cleaning and washing jobs in the cellar production facility; and
  - 31.2. washing dishes, cleaning up and covering lunch breaks in the cellar door.<sup>39</sup>
32. Mr Grundel's evidence is that these jobs that are currently performed by staff, could instead be offered to new casual employees and in particular to local secondary school students.<sup>40</sup> His oral evidence is that these jobs could be filled at short notice.<sup>41</sup>
33. We submit this evidence is not adequate for the following reasons:
  - 33.1. The profile of a cellar door sales employee is that of a well tempered, knowledgeable and broadly appealing individual with sales skills Mr Grundel describes as a 'specialist skillset in itself and it's quite hard to find'.<sup>42</sup> This is not a role that could be filled by school-aged employees, not only for their lack of expertise and age-appropriate demeanour, but also due to the legal minimum age for service of alcohol. There remains a very limited number of jobs that could be fulfilled by high school students in the cellar door.
  - 33.2. There are potential difficulties with attraction and retention of skilled staff if only two-hour shifts were offered, and particularly on short notice.
  - 33.3. In the cellar, even if it were accepted that additional casual employees would be offered two hours of work, the implication is that current

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<sup>37</sup> *Todd Statement*, at [8].

<sup>38</sup> Transcript 15 August 2016, Steven Todd at PN545.

<sup>39</sup> *Grundel Statement*, [7] to [9].

<sup>40</sup> *Ibid*, at [10].

<sup>41</sup> Transcript 15 August 2016, Anthony Grundel at PN476.

<sup>42</sup> *Ibid*, at PN456.



employees would lose two hours of work. The industrial value of this outcome is unclear.

- 33.4. There are other methods available, and which are utilised such as the staggering of start and finishing times to create overlap of staff to accommodate spikes in visitor numbers.<sup>43</sup>

## THE MODERN AWARDS OBJECTIVE

34. In exercising its powers in the four-yearly review the Fair Work Commission must ensure that the awards together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions taking into account the matters listed in section 134(1)(a) – (h) of the *Fair Work Act 2009* ('the FW Act'). This is the modern awards objective.

35. The task of the Commission is to determine whether the variation sought by the SAWIA is *necessary* to achieve the modern awards objective.<sup>44</sup>

36. We consider each matter contained in section 134(1) below.

### (a) relative living standards and the needs of the low paid

37. It is significant to note that the National Minimum wage is \$17.70 per hour, only just below the \$17.96 hourly wage of a Grade 1 adult employee under the *Wine Industry Award 2010*.

38. We also note the expert evidence led by the ACTU regarding the costs associated with attending employment including child-care, transport and uniforms.<sup>45</sup>

39. If a 2 hour minimum engagement period is introduced, an adult employed as a casual will be guaranteed the following rates according to classification:<sup>46</sup>

Classification	2 hours at casual rate
Grade 1	\$44.90
Grade 2	\$46.85
Grade 3	\$48.78
Grade 4	\$51.53
Grade 5	\$54.75

<sup>43</sup> Transcript 15 August 2016, Anthony Grundel at PN479.

<sup>44</sup> *Fair Work Act 2009*, section 138.

<sup>45</sup> See Professor Markey, Dr McIvor and Dr O'Brien 'Supplementary Report: Casual and Part-time Employment in Australia' at page 62 onwards.

<sup>46</sup> These rates have been updated since the AWU 22 February 2016 Submission.

40. The current daily payment received via a Newstart Allowance is \$52.87 for a single person without children, and \$57.19 for a single person with a child or children.<sup>47</sup> The table above demonstrates that only a Grade 5 employee (without children) would receive more than the Newstart Allowance equivalent rate.
41. The effect of the SAWIA's proposed variation, is that employees travelling to wineries to attend work may only take home between \$44.90 and \$54.75 for that day, and that most employees, and all employees in the cellar door sales stream, would be better off receiving the Newstart Allowance.<sup>48</sup>
42. There is no evidence led by the SAWIA as to the desires of employees to perform short shifts. The Affidavit of Mr Grundel provides hearsay evidence of a retired school teacher who would be happy to work casual shifts on an as 'needs basis',<sup>49</sup> and 'more likely to be able to come in' at short notice. This evidence does not go as far as to say the particular employee would be happy to attend at short notice for a period of only two hours, and has limited application beyond a local employee in semi-retirement.
43. On the other hand, the evidence provided by AWU officials that organise in the wine industry is that employees have never reported they would like to work less than four hours.
44. The loss of one third of an employees guaranteed daily income is self-evidently significant for a person attempting to plan and budget. The reduction to the minimum engagement period will reduce the guaranteed take-home pay of casual employees, and submit them to unstable working conditions, which will affect their lives outside of work.

*(b) the need to encourage collective bargaining*

45. The AWU do not accept the casual minimum engagement period is a genuine problem in the wine industry as a whole, nor for any one classification stream, nor in any one state – to justify the variation sought by the SAWIA.
46. However, if the current minimum engagement period is uniquely a problem in some workplaces, employers could negotiate an enterprise agreement to vary this condition subject to the Better Off Overall Test (BOOT).
47. Reducing the minimum engagement period discourages those employers from collective bargaining as they would be able to access labour at the lowest wage rate with all the benefit of flexibility already achieved.

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<sup>47</sup> Department of Human Services, *Newstart Allowance* (2016)  
<<https://www.humanservices.gov.au/customer/services/centrelink/newstart-allowance>>.

<sup>48</sup> The classification structure ends at Grade 4 for the cellar door sales stream – see Schedule B of the *Wine Industry Award 2010*.

<sup>49</sup> See Transcript 11 July 2016, Anthony Grundel at PN476.

(c) the need to promote social inclusion through increased workforce participation

48. For the reasons set out above at paragraphs 37 to 41, reducing the minimum engagement period may discourage workforce participation in this industry for workers who are otherwise eligible to receive a Newstart Allowance.

(d) the need to promote flexible modern work practices and the efficient and productive performance of work

49. As above, at paragraph 45, the AWU do not accept that the current minimum engagement period poses any significant risk to employers across the wine industry.

50. However, where greater flexibility is required, we submit this is an appropriate goal for enterprise bargaining, rather than via a significant variation that will affect all casual employees in all streams, and at a significant expense to casual workers. This approach is consistent with 134(1)(b) of the FW Act as it encourages collective bargaining.

(da) the need to provide additional remuneration for:

- (i) employees working overtime; or
- (ii) employees working unsocial, irregular or unpredictable hours; or
- (iii) employees working on weekends or public holidays; or
- (iv) employees working shifts;

51. This appears to be a neutral factor.

(e) the principle of equal remuneration for work of equal or comparable value

52. This appears to be a neutral factor.

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;

53. If the SAWIA's claim were successful, the benefit to employers would be a slight saving on employment costs overall, while the cost to individual employees would be significant.

54. As set out in our submission of 22 February 2016, it is not clear on the evidence led by the SAWIA that there is a substantial need for casual employees to fulfil two hour shifts, nor is there a significant case that reveals employers are forced to pay casual staff during periods of unexpected rainfall.

55. We have reviewed the evidence of Anthony Grundel<sup>50</sup> above at paragraphs 33.1 to 33.2 in regards to the specialist role of a cellar door sales employee, and the difficulty in finding someone with the appropriate skills. This role was also examined in detail by United Voice when cross-examining Richard van Ruth of Primo Estate Winery who also reported difficulties in finding good cellar door staff.<sup>51</sup> It appears questionable whether two-hour shifts would attract and retain appropriate candidates for this role.

56. Moreover, although the wine industry has suffered over recent years, the industry report authored by Ibis World and submitted by the AWU finds that the wine industry is growing, and that recovery is already underway as of 2015.<sup>52</sup> In this context, we submit that the slight benefit to a growing industry should not be awarded at the great expense to low paid workers.

(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

57. This appears to be a neutral factor.

h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

58. There is insufficient evidence to show that the current minimum engagement period would increase employment in either of the vineyard, the cellar door, or in the cellar production facility.

59. Our submissions above at paragraphs 53 to 56 apply here.

## **CONCLUSION**

60. A case to reduce the minimum engagement period for casual employees in the wine industry has not been made out.

61. The benefit to employers is not clear and has not been quantified, while the effect on individual employees would be harsh. A reduction to the guaranteed hours per shift will introduce financial instability for casual employees regardless of whether they end up working longer than 4 hours.

62. There are workable solutions that have been considered in these proceedings that would assist employers in the cellar door and in the vineyard. Notably, the

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<sup>50</sup> Transcript 11 July 2016, Anthony Grundel at PN456.

<sup>51</sup> See Transcript 17 August, Richard van Ruth, PN2166 to PN2185.

<sup>52</sup> IbisWorld Industry Report C1214 'Wine Production in Australia' Executive Summary, 3.

staggering of staff rosters does and can assist in the cellar door, and the stand down provisions provided under the FW Act can be utilised in circumstances of unpredictable weather.

63. The current minimum engagement period forms part of a safety net of terms and conditions for casual employees. The AWU submit there is no case to necessitate further flexibility to employers at the expense of low paid workers. Where greater flexibility is required, employers may negotiate this through enterprise bargaining subject to the BOOT. The principles contained in the modern awards objective support a finding to reject the SAWIA's proposed variation.

**END.**

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

Roushan Walsh  
National Legal Officer  
The Australian Workers' Union