

**FAIR WORK COMMISSION**

**4 YEARLY REVIEW OF MODERN AWARDS**

**(S.156 of the Fair Work Act)**

**SUBMISSION BY AUSTRALIAN MEAT INDUSTRY COUNCIL**

**Re: Miscellaneous Award (AM2014/237) – Coverage Clause**

**2<sup>nd</sup> March 2020**

## **Introduction**

1. This is a reply submission from Australian Meat Industry Council (AMIC) in relation to the Decision of the Full Bench of the Fair Work Commission (Commission) dated 12<sup>th</sup> February 2010 relating to the Coverage clause of the Miscellaneous Award 2020 (AM2014/237).
2. Paragraph [60] of the Decision allows interested parties a 21 day period to provide any evidence or submissions in response to the provisional conclusions expressed in the Decision.

## **Matters in response to Miscellaneous Award (AM2014/237) – Coverage Clause Decision dated 12<sup>th</sup> February 2020**

3. This submission is principally in response to the issues raised in paragraph [57] of the Decision, which relates to Meat Inspectors.
4. We contend that the occupation of Meat Inspector is excluded from award coverage because of section 143(7)(a) of the Fair Work Act 2009 (Act) and would continue to be excluded if the provisional view of the Full Bench with respect to the variation to the Miscellaneous Award were made.
5. The basis of this contention is because of the same reason advanced by AMIC in its submission to the in 2009, in that the seniority and independent activity which respect to the responsibilities, accountability and duties of meat inspectors is the reason why they are award free to this present day.
6. We disagree with the comment by the Commission in paragraph [57] in relation to non-award coverage that, *‘.it seems unlikely however that this was because of their “seniority”, given that Australian Government inspectors were award-covered’*.

7. All privately employed inspectors, either employed by a labour hire company or directly employed by a plant, are known as Australian Government Authorised Officers<sup>1</sup> (AAO's) have to sign a Deed of Obligation<sup>2</sup> with the Federal Department of Agriculture. Once executed this Deed essentially means that whilst performing their inspection duties they are an agent of Government under the Export Control Act and answer directly to the Senior Government official on site (the OPV).
8. AAO's must comply with the Australian Export Meat Inspection System (AEMIS), which is an integrated set of controls specified and verified by Government that ensure the safety, suitability and integrity of Australian meat and meat products. Underpinning AEMIS are objective hygiene and performance standards which are continually monitored.
9. AAO's also have to adhere to the Commonwealth Government values and code of conduct as outlined in the Australian Public Service as specified in section 3 of the Public Service Act 1999. The Lawful directions of an OPV must be followed by an AAO and the Deed allows for this direct line of reporting. When undertaking the functions they are appointed for under the Export Control Act 1982, AAOs are regarded as Australian Government officials, but are not considered employees of the Australian Government. Thus such person's duties and responsibility go above and beyond an award employee.
10. We argue that the view of the Commission, in relation to the comment in paragraph [57] of the Decision that 'The more likely explanation is that award coverage simply failed to follow the fairly recent reform of the meat industry whereby meat export was privatised', is incorrect in that the occupation of meat inspector is not restricted to the export meat processing

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<sup>1</sup> Independent Employer of Australian Government Authorised Officers (AAOs) Accreditation Scheme Fact Sheet for AAOs

<sup>2</sup> Australian Government Department of Agriculture AAO Deed of Obligations

sector. The meat processing sector have been employing meat inspectors for over 24 years and therefore such privately employed occupation is not new to the meat industry.

11. Inherently by nature of the role a meat inspector has to make significant decisions that have a financial and food safety consequence without input generally from others. This includes having ‘seniority’ over the senior management such as the plant manager and owner/s over production. Their decision to pass (approve) product for human consumption or condemn product/s is final and can commercially effect grower payment and ultimately yields for processors.
12. AAO’s is subject to ongoing performance verification against nationally prescribed performance standards set by the government and verified by the Department of Agriculture.
13. Meat Inspectors have never been covered by a private sector federal award, pre-reform award or Notional Agreement Preserving State Awards (NAPSA).
14. For the above reasons we contend that the appeal decision of the Full Bench in *United Voice v Gold Coast Kennels Discretionary Trust t/as AA Pet Resort* is not relevant to the occupation of meat inspector.

### **Modern Award Objective**

15. In relation to the Full Bench taking into account the required considerations in section 134(1) of the Act, AMIC provides its response with respect to occupation of meat inspector, to each subparagraph contained in paragraph [58] in the Decision.

In response to subparagraph [58](a) we state that the position of meat inspector is not a low paid occupation. The minimum annual remuneration paid to privately employed meat inspectors is a salary above \$57,000, working a minimum of 38 hours per week. Hours worked in excessive of the 38 hours per week are paid in addition to this salary at the overtime rates determined at

time and a half for the first three hours and double time thereafter. The average maximum hours of work per week would be 47.5 which attracts an average minimum salary of around \$72,000.

16. In response to subparagraph [58](da), we contend that the remuneration paid to meat inspectors, as outlined in paragraph 14 of this submission, sufficiently covers entitlements for additional remuneration when working beyond 38 hours, weekend work, public holidays or shifts. Although, the vast majority of hours worked by meat inspectors would only occur between Monday to Friday based on the operating and productions hours of the plant.
17. We also contend that the hours worked by meat inspectors are not ‘unsocial, irregular or unpredictable on the basis that their duties are subject to the normal production times of the establishment to which they are allocated to.



## DEED OF OBLIGATIONS

(For establishment-employed personnel undertaking the role of an Australian Government Authorised Officer)

DEED POLL dated \_\_\_\_\_ / \_\_\_\_\_ / 20\_\_\_\_\_

.....  
(insert name)

of

.....  
(insert address)

**(Meat Safety Inspector)**

### RECITALS

- A. The Meat Safety Inspector is qualified to provide post-mortem meat safety inspection services as an authorised officer in relation to the processing of meat under the Export Control Act.
- B. In providing those inspection services at Registered Establishments that are to be identified in the Instrument of Appointment, the Meat Safety Inspector has agreed to comply with the obligations set out in this Deed.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**AAO** means an Australian Government Authorised Officer.<sup>1</sup>

**AEMIS** means the Australian Export Meat Inspection System.

**Australian Government Authorised Officer** means a Meat Safety Inspector who is authorised under section 20 of the Export Control Act to perform the Services for the purposes of Australian Export Meat Inspection System (AEMIS).

**Australian Government Authorised Officer Uniform** means the following uniform:

- (a) *a shirt, trousers and coat (where applicable) which are white in colour;*

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<sup>1</sup> The word ‘Government’ is silent in the acronym ‘AAO’

- (b) *one breast of the shirt and / or coat has the words "Australian Government Authorised Officer" embroidered or otherwise permanently applied to the clothing. These words must comply with the following specifications and be positioned so they are visible even if an apron is worn:*
  - (i) *across two lines;*
  - (ii) *in black text colour;*
  - (iii) *in "Cambria" font;*
  - (iv) *with the uppercase letters about 10mm in height (40 pt); and*
  - (v) *with the lower case letters about 5mm in height (24 pt);*
- (c) *a head covering which is white in colour and complies with the Registered Establishment's hygiene and work, health and safety policies;*
- (d) *boots which comply with the Registered Establishment's hygiene and work, health and safety policies; and*
- (e) *an identification card issued by the department, which must be readily available upon request by an Authorised Officer or auditor.*

or as otherwise required by the department from time to time.

**Australian Meat Standard** means the Australian standard for the hygienic production and transportation of meat and meat products for human consumption (AS 4696) as incorporated by reference into the *Export Control (Meat and Meat Products) Orders 2005*.

**Commencement Date** means the date entered on the signed Instrument of Appointment after all assessments and relevant documentation has been received.

**Commonwealth** means the Commonwealth of Australia as represented by the department.

**Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is treated by a party or the parties as confidential; or
- (c) a party or the parties know or ought to know is confidential;

except information that is or becomes public knowledge otherwise than by breach of this Deed.

**The department** is the Australian Government Department of Agriculture and Water Resources.

**Deed** is this deed poll and includes any schedules and attachments.

**IOA** means the Instrument of Appointment. The IOA outlines the specified functions and geographical restrictions to exercise these functions in accordance with the Export Control Act.

**Meat Safety Inspector** means a meat safety inspector (within the meaning given in the Australian Meat Standard (AS4696) who is an authorised officer under the Export Control Act.

**OPV** means the department on-plant Veterinarian appointed and on duty at the Registered Establishment at which the Meat Safety Inspector is performing services.

**Personal Information** has the same meaning as in the *Privacy Act 1988 (Cth)* as amended from time to time.

**Registered Establishment** has the same meaning as in the Export Control Act.

**Services** means post mortem meat safety inspection services performed at any of the Registered Establishments listed in the Instrument of Appointment in accordance with the Australian Meat Standard, the Export Control Act and subordinate legislation (including, but not limited to, the *Export Control (Meat and Meat Products) Orders 2005*), and the instrument appointing the Meat Safety Inspector as an authorised officer pursuant to section 20 of the Export Control Act.

**Term** means the term of this Deed under clause 2.

**WHS Law** means the *Work Health and Safety Act 2011 (Cth)* and any legislative instruments executed under that Act.

## 1.2 Interpretation

In this Deed, unless the contrary intention is indicated:

- (a) the singular includes the plural and vice-versa;
- (b) a reference to one gender includes the other;
- (c) a reference to a person includes a body politic, body corporate or a partnership;
- (d) a reference to an Act is a reference to an Act of the Commonwealth, state or territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (e) a reference to a clause includes a reference to a subclause of that clause;
- (f) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document in effect on the Commencement Date, or alternatively, a reference to another version of the document if agreed in writing between the parties.

## 2. TERM

Subject to:

- (a) the Deed being signed by the Meat Safety Inspector; and
- (b) an instrument of appointment being signed by the delegate of the Secretary of the department under section 20 of the Export Control Act,

this Deed commences on the Commencement Date stated on this Deed and continues until the date on which the Meat Safety Inspector ceases to be an Australian Government Authorised Officer under section 20 of the Export Control Act. Clauses 6 and 7 survive and continue to be binding after cessation of the appointment of the Meat Safety Inspector as an Australian Government Authorised Officer.



### **3. SERVICES STANDARDS**

#### **3.1 Services to be performed personally**

The Services must be performed personally by the Meat Safety Inspector.

#### **3.2 Performance of the Services**

Without limiting specific provisions of this Deed, the Meat Safety Inspector must:

- (a) perform the Services to the satisfaction of the department and in accordance with departmental Standard Operating Procedures and Work Instructions and any lawful directions or instructions issued by the department from time to time;
- (b) comply with all legislation, regulations, ordinances, policies and codes relevant to the performance of the Services;
- (c) perform the services with due care and professional skill;
- (d) ensure that the Meat Safety Inspector's notification requirements under clause 8.2 of this Deed takes priority over the Meat Safety Inspector's performance of any other duties or responsibilities (including employee duties and responsibilities);
- (e) comply with applicable Commonwealth, state or territory work health and safety legislation;
- (f) provide information to the department or its nominated agents, advisers and suppliers that is relevant to the Services;
- (g) when using the premises or facilities of a Registered Establishment for the purposes of the Services, comply with all reasonable directions and procedures relating to work health and safety, security and prevention of fraud at those premises or facilities (including all applicable department policies) whether specifically drawn to the attention of the Meat Safety Inspector or as might reasonably be inferred from the circumstances; and
- (h) uphold the values, and behave in a manner that is consistent with the values and code of conduct, of the Australian Public Service (**APS**). The APS values and code of conduct are specified in Part 3 of the *Public Service Act 1999* (Cth).

#### **3.3 Warranty as to expertise, etc.**

The Meat Safety Inspector warrants that:

- (a) the Meat Safety Inspector is suitably qualified and has sufficient expertise to perform the Services of an Australian Government Authorised Officer;
- (b) the Meat Safety Inspector is permitted by, or under, Australian law to work in Australia and to perform the Services of an Australian Government Authorised Officer;
- (c) the Meat Safety Inspector is, or will be at the time of performing the Services, an Australian Government Authorised Officer; and
- (d) in performing the Services of an Australian Government Authorised Officer the Meat Safety Inspector will not do anything that will damage the Commonwealth's interests and international standing.

### 3.4 Responsibilities of the Meat Safety Inspector

The Meat Safety Inspector must:

- (a) hold a Certificate III or above (or have equivalency to meeting this qualification requirement endorsed by the department) in *Meat Processing (Meat Safety)*, and have the appropriate post mortem units of competency for the species they will be authorised to inspect. If the Meat Safety Inspector holds only a Certificate III, the Meat Safety Inspector must undertake the necessary training and obtain a Certificate IV qualification within 12 months of the date on which he or she is appointed as an Australian Government Authorised Officer. If the Meat Safety Inspector fails to obtain the certificate IV within the 12 months their authorisation as an Australian Government Authorised Officer will be revoked.
- (b) maintain currency of skills by participating in the department capability assessment program and attending other training as required and/or provided by the department from time to time;
- (c) record and report condemnations in accordance with departmental instructions;
- (d) participate in regular reviews conducted by the department of the Meat Safety Inspector's performance against objective post-mortem inspection performance standards;
- (e) during any audit of the operations of a Registered Establishment by the department or competent overseas authorities, provide such assistance to the auditor as is requested or is reasonably necessary to enable the auditor to perform the audit;
- (f) liaise with the department when complying with any reasonable requests made by the department;
- (g) disclose to the department during the Term of this Deed any event or information which relates to or may affect the department's satisfaction that the Meat Safety Inspector is a suitable person to be appointed as an authorised officer under the Export Control Act, including (but not limited to):
  - (i) if the Meat Safety Inspector is convicted of an offence against the *Crimes Act 1914*, *Criminal Code Act 1995*, another law of the Commonwealth or a law of a state or territory; or
  - (ii) if the Meat Safety Inspector has outstanding debts due to the Commonwealth; or
  - (iii) if the conditions upon which the Australian Government Authorised Officer is permitted to work in Australia change.
- (h) wear the Australian Government Authorised Officer Uniform that meets the specifications of the department at all times while performing the Services and other departmental approved duties.
- (i) notify the department immediately where the details of Australian Government Authorised Officer has changed.
- (j) keep their department-issued identification card in possession and ensure the card is maintained intact at all times. The Meat Safety Inspector further acknowledges:

- (i) where the identification card is damaged, defaced or stolen, they will be charged an administration fee to re-issue a new card, as permitted under the conditions of use of access pass advice issued by department Security; and
- (ii) where the status of Australian Government authorised officer ceases, clause 4.4 of this deed is enforced.

#### **4. AUTHORITY TO ACT**

- 4.1 The Meat Safety Inspector is authorised by the department to act on behalf of the department only as provided for in any IOA that is made in respect of the Meat Safety Inspector under section 20 of the Export Control Act.
- 4.2 The Meat Safety Inspector will only be appointed as an Australian Government Authorised Officer under section 20 of the Export Control Act *after* having completed required pre-requisite criteria, species capability assessment, a formal information session, induction training and having achieved necessary competencies.
- 4.3 The Meat Safety Inspector acknowledges that the Meat Safety Inspector's appointment as an Australian Government Authorised Officer can be revoked by the Secretary of the Department (or his duly appointed delegate) at any time, without departmental liability to the Meat Safety Inspector. Circumstances where this could occur include, but are not limited to, when the Meat Safety Inspector :
  - (a) fails to properly conduct himself or herself or fails to perform the Services to the satisfaction of the department;
  - (b) engages in any conduct (either inside or outside of the Registered Establishments) which is likely to adversely affect the reputation of the department; or
  - (c) is no longer considered by the department to be a suitable person to be appointed as an Australian Government Authorised Officer.
- 4.4 Where appointment as an Australian Government Authorised Officer ceases, the person formerly appointed to that position shall forthwith return the identity card to the department, and if that person fails to do so, the person is guilty of an offence punishable on conviction by a fine not exceeding \$100, pursuant to section 21 of the Export Control Act.
- 4.5 Where the Meat Safety Inspector requests re-appointment as an Australian Government Authorised Officer after revocation, the Meat Safety Inspector acknowledges that it is a requirement to submit a new application, including all supporting documentation to the department.

#### **5. WORK HEALTH AND SAFETY**

##### **5.1 Duties of Workers under WHS Law**

While at work, a Meat Safety Inspector must take reasonable care to:

- (a) ensure their own health and safety;
- (b) ensure the safety of others in the workplace;
- (c) cooperate with health and safety guidelines, instructional material and procedures;

- (d) comply with any reasonable instruction given in relation to health and safety to enable the department to meet its obligations under the WHS Law; and
- (e) comply with any reasonable instruction given in relation to health and safety to enable a third party to meet its obligations under the WHS Law.

## **5.2 Vaccination**

The Meat Safety Inspector is responsible for obtaining a vaccination against Q fever and must, prior to performing the Services, provide to the department evidence that they have received a vaccination against Q fever or proof of immunity.

## **5.3 Medical Clearance**

Without derogating from the Meat Safety Inspector's obligations in this Deed, the Meat Safety Inspector must comply with the requirements of undertaking and maintaining suitable medical clearances.

# **6. SECURITY AND CONFIDENTIAL INFORMATION**

## **6.1 Compliance with policies**

Without derogating from the Meat Safety Inspector's obligations in this Deed, the Meat Safety Inspector must comply with the requirements of the Commonwealth's security policies. The Meat Safety Inspector is entitled to know where the Commonwealth's security policies can be accessed as a condition of their appointment as an Australian Government Authorised Officer. The web address for the Commonwealth's security policies is:  
<https://www.protectivesecurity.gov.au/Pages/default.aspx>

## **6.2 Confidential Information**

- (a) The Meat Safety Inspector must not, without obtaining the prior written approval of the owner of the confidential information, whether it be the department or a private entity:
  - (i) use Confidential Information for any purpose other than the performance of the Meat Safety Inspector's obligations under this Deed; or
  - (ii) disclose Confidential Information to any third party, except in accordance with the procedures set out in this clause.
- (b) This clause survives the expiration or termination of this Deed.

## **6.3 Disclosure to third parties of Confidential Information**

The Meat Safety Inspector may disclose Commonwealth Confidential Information to a third party if:

- (a) the Meat Safety Inspector has obtained the prior written approval of the department, which approval will not be unreasonably withheld if the Meat Safety Inspector has procured a suitable confidentiality undertaking in respect of the information from the third party; or
- (b) disclosure is:
  - (i) required or compelled by law; or
  - (ii) necessary for the conduct of any legal proceedings arising in relation to this Deed.

#### **6.4 Terms of Deed**

The terms of this Deed are not confidential.

### **7. PROTECTION OF PERSONAL INFORMATION**

#### **7.1 Meat Safety Inspector to comply with privacy obligations**

- (a) The Meat Safety Inspector must comply with privacy obligations under relevant legislation and warrants that he or she has not acted or omitted to act so as to expose the Commonwealth to a breach of privacy claim.
- (b) The Meat Safety Inspector must not do an act, or engage in a practice, that would breach the Australian Privacy Principles under the *Privacy Act 1988* (Cth) if done by or engaged in by the department.

### **8. WARRANTY AND CONFLICT OF INTERESTS**

#### **8.1 Warranty that there is no undisclosed conflict of interests**

- (a) The Meat Safety Inspector warrants that at the date of signing this Deed, he or she has informed the department, in writing, of any employment or other working relationship that currently exists (or has previously existed) between the Meat Safety Inspector and any Registered Establishment.
- (b) The Meat Safety Inspector warrants that, to the best of his or her knowledge after making diligent inquiry, at the date of signing this Deed no undisclosed conflict of interests (real or perceived) exists or is likely to arise in the performance of the Services.

#### **8.2 Notification of a conflict of interests**

- (a) If, during the performance of the Services a conflict of interests arises, or appears likely to arise, the Meat Safety Inspector must:
  - (i) notify the OPV immediately orally, and if requested in writing;
  - (ii) make full disclosure to the department of all relevant information relating to the conflict; and
  - (iii) take such steps as the department reasonably requires to resolve or otherwise deal with the conflict.
- (b) Without limiting the circumstances that require notification under clause 8.2(a) above, the Meat Safety Inspector must notify the department immediately if he or she is offered a position of management or control in regard to the operations carried on in a Registered Establishment.
- (c) For the purpose of this Deed, a person is taken to manage or control the operations carried on in a Registered Establishment if he or she has:
  - (i) authority to direct the operations, or an important or substantial part of the operations; or
  - (ii) authority to direct a person who has, or would have, authority of the kind referred to in paragraph (i) in the exercise of that authority.

- (d) For the purpose of this Deed, a person is taken to have an interest in an entity if he or she:
  - (i) is a director;
  - (ii) is a shareholder of the entity or has the ability to exercise, or control the exercise, of the right to vote in respect of voting shares or other form of voting equity;
  - (iii) has the ability to dispose or exercise control over the disposal of shares or other form of equity;
  - (iv) has the ability to remove directors;
  - (v) has the ability to cast votes at the meetings of the board of directors;
  - (vi) has any other means, direct or indirect, of influencing the decision and financial or operating policies of the company;
  - (vii) has the ability, directly or indirectly, through a position of management, of affecting operations of the company.

**8.3 Meaning of conflict of interests**

A conflict of interests includes a conflict of:

- (a) interest and duty; and
- (b) duty and duty.

**8.4 Resolving conflicts**

The parties agree to take such steps as are reasonably required to resolve or otherwise deal with the conflict.

**9. GOVERNING LAW**

This Deed is governed by the law applicable in the Australian Capital Territory. The courts of the Australian Capital Territory shall have exclusive jurisdiction to decide any matter arising out of this Deed.

**EXECUTED** as a Deed Poll.

**SIGNED** by the Meat Safety Inspector

by ..... )  
 (print name of )  
 the Meat Safety Inspector) Signature .....

in the presence of: )  
 )  
 ..... Signature .....  
 (print witness name)



## Independent Employer of Australian Government Authorised Officers (AAOs) Accreditation Scheme Fact Sheet for AAOs

### ***What is the 'Independent Employer of AAOs Accreditation Scheme'?***

It is a scheme developed by the Department of Agriculture to provide for the employment of Australian Government Authorised Officers (AAOs) by independent employment providers. Under the Scheme, agencies supply AAOs to Australian export slaughter establishments to meet EU standards.

### ***Why is the Department of Agriculture running the Scheme?***

Many countries accept product prepared to the Australian Standards, however where there are additional requirements, the department will develop programs to facilitate trade to those markets.

The European Union requires that post-mortem inspections are performed by inspectors employed by a party other than the food business operation. Therefore to export product to that market, AAOs must be sourced from an Independent AAO Employer.

### ***Who can employ an AAO?***

AAOs can be employed by an export registered abattoir or labour hire provider (e.g. independent AAO employer).

For the EU market, AAOs must be employed by an independent AAO employer approved by the department to supply AAOs.

### ***Can an AAO be employed by an Independent AAO Employer and an export meat company at the same time?***

No. An AAO must be paid by the Independent AAO Employer at all times for whatever work they do at a meat establishment and cannot at any time work directly for or be paid by the meat establishment e.g. Not even in an off season.

### ***How will my role be different working for an IAE?***

The primary function is still to perform meat inspection activities. You may undertake other tasks reasonably considered to be associated with the meat inspection skills and role detailed in departmental work instructions. It may include such tasks as preparing material for inspection, trimming defects, ageing animals through dentition and disposing of inspected materials. Activities such as butchering or labouring are outside the scope of these associated activities and therefore would not be acceptable tasks to be performed by an AAO.

***Where can I find information about the Scheme?***

Information on the application process for AAOs, including the application form and the Independent Employer of AAOs Accreditation Scheme is available on the department's website at <http://www.daff.gov.au/biosecurity/export/meat/elmer-3>.

***Further Information***

To find out more on this initiative including the AAO approval process, mandatory qualifications and how to contact an Independent AAO Employer, please visit the [Independent Employer of AAOs Accreditation Scheme](#) webpage on the department's website.

**Departmental Contacts: Assistant Director – Technical Training and Support Systems,  
Export Meat Program.**

**Email:** [Mid.opsCoord@agriculture.gov.au](mailto:Mid.opsCoord@agriculture.gov.au)

**Telephone:** 02 6272 3933