

From: Chambers - Asbury DP
Sent: Tuesday, 21 May 2019 1:20 PM
To: 'Zach Duncalfe'; 'Stephen Smith'; Ashvini Ambihaipahar; 'Ben Rogers'; 'Motti, Eric'; Abha Devasia; Larsen, Inez; Gabriel Miller
Cc: AMOD; Chambers - Asbury DP
Subject: AM2017/56 Sugar Industry Award 2010

Dear Parties,

Re: AM2017/56 – *Sugar Industry Award 2010*

Further to the Decision published on 26 March 2019, an issue has been noted in relation to the placement of the “deeming provision” for seasonal employees. It is the provisional view of the Full Bench that the deeming provision would be more appropriately placed in clause 11.5 than 3.1.

Please find attached an amended version of the draft determination published on 26 March 2019. Amendments have been made to items 6 and 9.

Parties are invited to review the amended draft determination and provide any comments to amod@fwc.gov.au by **close of business on 28 May 2019**.

Kind regards,

CALLUM YOUNG

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Fair Work Commission

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DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Sugar Industry Award 2010

(AM2017/56)

SUGAR INDUSTRY AWARD 2010

[\[MA000087\]](#)

Sugar industry

DEPUTY PRESIDENT ASBURY
DEPUTY PRESIDENT ANDERSON
COMMISSIONER MCKENNA

BRISBANE, XX APRIL 2019

4 yearly review of modern awards – Sugar Industry Award 2010 – award stage - substantive issues.

A. Further to the Full Bench Decision issued by the Fair Work Commission on 26 March 2019 [[\[2019\] FWCFB 1980](#)], the above award is varied as follows:

1. By deleting the definition of “bulk terminal operation” in clause 3.1 and inserting the following:

bulk terminal operations is defined at clause 4.2(e). The terms and conditions of bulk terminal operations employees are found at Part 9 of this Award.

2. By deleting the definition of “distillery sector” in clause 3.1 and inserting the following:

distillery sector is defined at clause 4.2(d). The terms and conditions of distillery sector employees are found at Part 8 of this Award.

3. By deleting the definition of “field sector” in clause 3.1 and inserting the following:

field sector is defined at clause 4.2(a). The terms and conditions of field sector employees are found at Part 7 of this Award.

4. By deleting the definition of “milling sector” at clause 3.1 and inserting the following:

milling sector is defined at clause 4.2(b). The terms and conditions of milling sector employees are found at Part 8 of this Award.

5. By deleting the definition of “refinery sector” at clause 3.1 and inserting the following:

refinery sector is defined at clause 4.2(c). The terms and conditions of refinery sector employees are found at Part 8 of this Award.

6. By deleting the definition of “seasonal employee” at clause 3.1 and inserting the following:

seasonal employee means an employee specifically engaged as or deemed to be a seasonal employee in accordance with clause 11.5.

7. By deleting clause 4.2 and inserting the following:

4.2 In this award **sugar industry** means the following:

(a) field sector: all sugar cane farming operations including the operations of contractors performing general farm work, cane harvesting and haul out work and farm management; cane testing; and pest, disease control, advisory and research operations of Cane Protection and Productivity Boards and the Bureau of Sugar Experiment Stations;

(b) milling sector: sugar milling including the following operations of the sugar miller: operations of transporting and processing cane including cane railway construction, maintenance, repair and operation; factory maintenance, repair and operation; raw sugar refining at a sugar mill; by-product manufacture and processing at a sugar mill; and packaging operations performed at a sugar mill;

(c) refinery sector: refining raw sugar at sugar refineries and those refineries’ own packaging and storage operations;

(d) distillery sector: distilling operations of sugar by-products for industrial purposes and packaging work in a distilling operation directly linked to a sugar mill;

(e) bulk terminal operations: bulk (packed or loose) receipt, storage, unloading and ship loading at the industry’s bulk terminals, including handling incidental commodities or material; and

(f) the generation and/or transmission of power and/or steam that is ancillary or incidental to the employer’s activities in clauses 4.2(b) to (d) (albeit that excess power may be sold into the grid).

8. By renumbering the clause 11.5 as 11.6.

9. By inserting a new clause 11.5 as follows:

11.5 Seasonal Employment

(a) A seasonal employee is an employee engaged by the employer on a full-time or part-time basis, on or about the commencement of the crushing season, for the purpose of performing duties directly and indirectly related to

crushing season operations and whose duties are completed and employment terminated on or about the end of the mill's crushing season.

(b) Provided that an employee who is not specifically engaged as a seasonal employee but is engaged after the first Monday in June in any one year and before the first Monday in June in the subsequent year will, for the purpose of a 38 hour week only, be deemed to be seasonal until the first Monday of June in that subsequent year.

10. By inserting a new 20.2(f) as follows:

(f) Casual employees may be engaged on a piecework basis in accordance with this clause. The piecework loading specified in clause 20.2(a) is calculated on the minimum hourly rate identified in clause 38 for the employee's classification level and does not compound on the casual loading specified in clause 11.3(a).

11. By deleting clause 22.20(d) and inserting the following:

(d) This allowance will be instead of any other provision relating to hot work, unpleasant conditions, confined spaces, repair work, dirty work, or wet work.

12. By renumbering clauses 22.31 to 22.35 as 22.32 to 22.36 respectively.

13. By inserting a new clause 22.31 as follows:

22.31 Tool allowance for apprentices

(a) Subject to paragraph (b) the employer must supply to apprentices referred to in Clause 12 of this award, all tools ordinarily required for the apprentices to perform their work, (Apprentice Tool Pack). Such Apprentice Tool Packs must be for no less than the retail price than set out in the following table:

Apprenticeship type	Annual value of tools	Total retail value of tools
Engineering Tradesperson (Electrical)	\$450.00	\$1800.00
Engineering Tradesperson (Electronic)	\$450.00	\$1800.00
Engineering Tradesperson (Fabrication)	\$337.50	\$1350.00
Engineering Tradesperson (Mechanical)	\$450.00	\$1800.00
Higher Engineering Tradesperson	\$450.00	\$2250.00
Systems Electrician	\$450.00	\$1800.00
Assembly and Servicing Tradesperson - Electrical	\$450.00	\$1800.00
Instrumentation Tradesperson	\$450.00	\$1800.00

Refrigeration and Air Conditioning Tradesperson	\$450.00	\$1800.00
Systems and Instrumentation Tradesperson	\$450.00	\$1800.00
Electricity Supply Tradesperson	\$450.00	\$1800.00
Other tradesperson	\$337.50	\$1350.00

(b) If the employer does not supply an apprentice with an Apprentice Tool Pack, the employer must pay the apprentice a tool allowance (apprentice tool allowance) that must be equivalent to the total retail value of the tools set out in paragraph (a).

(c) The employer must supply the Apprentice Tool Pack or the apprentice tool allowance:

(i) In total, within a period of 3 months after employment commences or at the end of the probationary period, whichever first occurs; or

(ii) In annual instalments, with the first instalment being supplied within a period of 3 months after employment commences or at the end of the probationary period, whichever first occurs.

(iii) During the second and subsequent years of the apprenticeship, the tool allowance must be supplied within a period of 3 months from the commencement date of each year.

(d) If the employer requires an apprentice to supply any tools not included in the Apprentice Pack, the employer must reimburse the apprentice the retail value of the tools, upon proof of purchase of the tools, purchased by the apprentice, to the employer.

(e) The Apprentice Tool Pack supplied to an apprentice by their employer will become the property of the apprentice.

(f) If the apprentice does not complete the apprenticeship with their employer:

(i) the Apprentice Tool Pack must be returned to the employer; or

(ii) the retail value of the Apprentice Tool Pack must be reimbursed to the employer.

(g) Where the apprentice was provided an apprentice tool allowance paid in a single instalment, the pro rata value of the allowance for the incomplete portion of the apprenticeship must be refunded by the apprentice to the Employer within three months of the end of employment.

(h) Where the apprentice has purchased tools during their apprenticeship, for which they have not been reimbursed, the tools must remain the property of the apprentice.

(i) An apprentice must replace or pay for any tools supplied by their employer which are lost because of the negligence of the apprentice.

(j) An apprentice is not required to pay for any tools supplied by their employer which are lost whilst securely stored at the employer's premises.

(k) If an employer has provided tools or paid a tool allowance to an apprentice prior to (insert date of award variation), the retail value of the tools or the amount of the allowance will be deducted from any entitlements of the apprentice under this clause.

(l) Where an apprentice is re-indentured with a different employer, the provisions of this clause shall apply with equal effect to the apprentice's new employer in relation to the residual term of apprenticeship but so that the collective obligations of the several employers does not exceed the requirements of this clause when applied to one employer.

(m) If paragraphs (f)(ii) and (g) apply to an employee who is under 18 years old, the employer cannot deduct an amount payable to the employee if the deduction is not agreed in writing by a parent or guardian of the employee.

(n) Any deduction made under paragraphs (f) and (g) must not be unreasonable in the circumstances.

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

B. This determination comes into operation from XX Month 2019. 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 XX Month 2019.

DEPUTY PRESIDENT

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