

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

05 May 2016

Re: AM2014/241 AWU reply submissions on drafting and technical issues in the Exposure Draft for the for the *Ports, Harbours and Enclosed Water Vessels Award 2016*

Background

On 23 March 2016 the President, Justice Ross published a Statement directing parties to file submissions in reply to drafting and technical issues raised in Group 3 exposure drafts by 05 May 2016.

The following parties filed submissions on drafting and technical issues found in the Exposure Draft for the *Ports, Harbours and Enclosed Water Vessels Award 2016* ('the Exposure Draft') as published on 15 January 2016:

- Australian Workers Union (**AWU**)¹
- Business SA (**BSA**)²
- Maritime Industry Australia Limited (**MIAL**)³
- W G McNally Jones Staff on behalf of the Maritime Union of Australia (**MUA**)⁴

The AWU submissions in reply appear below.

Reply submissions

The AWU apologises that the paragraphs in our Exposure Draft submissions erroneously start-over at page 2. We refer to paragraphs *and* page numbers when referring to these submissions to rectify this issue.

MUA

1. **Clause 6.4(h)** [paragraph 1]: We agree with the MUA that this clause is confusing, however, the issue remains outstanding – how does a part-time employee work additional hours that aren't overtime hours? We refer to our own submissions at paragraph 4 of page 1.

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014241-sub-awu-180416.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014217andors-sub-bussa-150416.pdf>

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014235-sub-mia-140416.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014241-sub-mua-140416.pdf>

2. **Clause 8.2 - 8.4** [paragraph 2]: We agree. This is consistent with our Exposure Draft submissions at paragraphs 2-3 on page 3.
3. **Clause 9.1** [paragraph 3]: The AWU did not make submissions in relation to this clause. Having considered the MUAs reference to the classifications in the pre-modern award, we agree that a crane driver of a 20 tonne crane should be paid the higher rate.
4. **Clause 9.1** [paragraph 4]: We agree.
5. **Clause 10.1(e)(f) and (o)** [paragraph 5]: We agree. This is consistent with our Exposure Draft submissions at paragraph 6 of page 3.
6. **Clause 10.1(j)** [paragraph 6]: We agree. The AWU make the same proposed amendment at paragraph 8 of page 4 of our Exposure Draft submissions.
7. **Clause 10.1(o)(i)** [paragraph 7]: The MUA prefer that this clause remain intact, and not refer to mobile phones. The AWU do not have a strong opinion in relation to this clause, but consider that it would be sensible to update the clause to generally account for reimbursement of work-related calls, whether the arrangement relates to a mobile phone or a landline.
8. **Clause 10.1(p)(iii)** [paragraph 8]: The MUA propose the words 'ordinary rate of pay for each day' instead of 'normal wage for each day' to reflect the updated language of the modern award. The AWU agree, but propose the words 'ordinary hourly rate' which is the defined term at A.1.1 and incorporates any applicable all-purposes allowance.
9. **Clause 10.1(iv)** [paragraph 9]: We agree.
10. **Clause 12.2** [paragraph 10]: We agree. The table at 12.2 should be introduced with the amended wording, and the heading for penalty rates on Saturdays, Sundays and public holidays should also be amended as proposed by the MUA. The AWU have made the same proposals at paragraph 14 at page 4 and 5 of our Exposure Draft submissions. We have also suggested setting ordinary hours for Saturdays so that payment of overtime after 3 hours can be calculated to bring the rate into line with overtime worked on weekdays.
11. **Clause 13.2** [paragraph 11]: We agree with the MUA that the casual loading is in addition to, not in substitution of overtime rates or shift work allowances. We support the MUAs proposed amendment to clause 6.5(b), but have also proposed wording for this clause at paragraph 5 of page 2 of our Exposure Draft submissions.
12. **Clause 3.2** ['Additional matters' paragraph 1]: We agree.

MIAL

13. **Clause 3.2:** We agree. The MUA have proposed wording to amend the referencing error as above at paragraph 12.
14. **Clauses 8.2 – 8.4:** We agree. See above at paragraph 2.
15. **Clause 10:** Per the second paragraph of the MIAL submissions on this clause, we disagree. The MIAL does not consider that allowances in clauses 10.1(e), (f) and (o) should be classed as expense related allowances. The MUA and AWU have proposed that the allowance for compulsory uniforms at 10.1(e) and compensation for loss of personal effects in the course of employment at 10.1(f) are expense related allowances – see paragraph 5 above.
16. **Clause 10.1(j):** We agree as above at paragraph 6.
17. **Clause 10.1(o):** We agree. The AWU have made the same suggestion at paragraph 7 of page 2 of our Exposure Draft submissions.
18. **Clause 10.1(p):** We agree. See above at paragraph 8.
19. **Part 5 Penalties and Overtime:** The MIAL say that there is no need to define a span of ordinary hours, and to do so would create inflexibility within the award, and that it is a substantive variation, not a drafting and technical error. The AWU understand the MIAL to be referring to ordinary hours defined for weekends. We have made submissions on this issue – see above at paragraph 10 in relation overtime on Saturdays. The AWU have proposed wording at clause 12, which would leave clause 7.2 intact.

BSA

20. **Clause 6.4(h)** [paragraph 12.1.1]: The AWU agree, and prefer BSAs suggestion that ‘additional hours’ be defined in the award rather than by agreement as the AWU proposed in our Exposure Draft submissions at paragraph 4 of page 1.
21. **Clause 6.4(h)** [paragraph 12.2.1]: BSA include at this paragraph, a discussion on ‘additional hours’, and are seeking feedback from their members in relation to the operation of additional hours in the industry.
22. **Clause 8.2 - 8.4** [paragraph 12.2.2]: All parties appear to agree that the breaks at these clauses are unpaid.
23. **Clause 9.1** [paragraph 12.2.3]: BSA are seeking member feedback in relation to payment of Crane Drivers. The AWU support the submission of the MUA as above at paragraph 3. BSA supports the insertion of classification definitions. The AWU reserves its views on this issue, and await the separate proceedings in AM2016/5.

24. **Clause 10.1(e), (f), and (o)** [paragraph 12.2.4]: We agree. This is consistent with the MUA and the AWU as above at paragraph 5. MIAL disagree.
25. **Clause 10.1(j)** [paragraph 12.2.5]: All parties agree. See above at paragraphs 5 and 16.
26. **Clause 10.1(o)** [paragraph 12.2.6]: We are unsure what BSA are clarifying here in relation to calls necessarily incurred. Is the submission that an employer should not have to provide a mobile phone, or that an employer should not have to pay for calls made on a mobile phone that are not work-related?
27. **Clause 10.1(p)(iii)** [paragraph 12.2.7]: We disagree. Although this allowance is not an all purpose allowance, it must be paid in addition to the allowances for all purposes at subclause (i) and (ii). For example, an employee on board a vessel carrying explosives, *and* proceeding beyond the limits of a harbour, river or bay -- should be paid the 25% loading at subclause (iii) and the all-purpose allowance at subclause (i). For this reason, clause 10.1(p)(iii) should refer to the 'ordinary hourly rate'. The MUA and MIAL agree. See paragraphs 8 and 18 above.
28. **Clause 10.2(i)(ii)** [paragraph 12.2.8]: BSA discuss possible meanings of the word 'attendances' at this clause, including accommodation and or 'eating utensils'. Accommodation is already accounted for at subclause (i), and as such, we accept the second possibility is more likely. In our own submissions the AWU have suggested that the word 'attendances' be removed at this clause. In consideration of BSAs commentary, we would prefer the replacement of 'attendances' with 'eating utensils'
29. **Clause 12.2** [paragraph 12.2.9]: BSA is currently seeking advice from their members in relation to ordinary hours on the weekend.
30. **Clause 13.2** [paragraph 12.2.10]: We agree. This is in accordance with paragraph 17, of page 6 of our Exposure Draft submissions. Our understanding is that shift work rates are not cumulative on the weekend penalty rates, and do not apply on weekends and public holidays.

END



Roushan Walsh
NATIONAL LEGAL OFFICER