

FAIR WORK COMMISSION

Fair Work Act 2009

AM2014/84 - 4 Yearly review of modern awards - Professional Diving Industry (Industrial) Award 2010

OUTLINE OF SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA

Introduction

1. On 3 November 2017, the Full Bench of the Commission issued a Statement¹ in response to correspondence sent by the Maritime Union of Australia (**MUA**) dated 1 September 2017. That correspondence raised concerns of members of the MUA that the casual hourly rate had been reduced from \$35.64 to \$31.98 and concluded:

The Union would like the opportunity to further discuss the effects of the decision with you and/or members of the Maritime Industry Panel at a time convenient to the Commission, and the Union.

2. In response, the Full Bench listed this matter for hearing at 2pm on 19 December 2017.
3. The MUA acknowledges the unusual circumstances that led to this hearing and expresses its gratitude to the Full Bench for this opportunity.

Background – hours of work for inshore divers and modern awards

4. Modern awards were created by the Australian Industrial Relations Commission (**AIRC**) following a request from the Minister for Employment and Workplace Relations under s.576C(1). Relevantly, that request provided that the creation of modern awards were not intended to disadvantaged employees.²

¹ [2017] FWCFB 5749

² Request under section 576C(1) – Award Modernisation consolidated version 17 August 2009 at 2(3)(c).

5. On 24 July 2009 the MUA submitted that the Commission should make the Diving Industry Award 2010 which consolidated entitlements previously contained in the *Recreational Diving Industry Award 2001* (AP812348) and the *Professional Divers' Maritime Union of Australia Award 2002* (AP814932). The MUA submissions proposed that the ordinary hours of work for inshore divers be:

20.4 Inshore Divers

- (a) The ordinary hours of work for professional divers working inshore should not exceed 6 hours and 36 minutes per day which may work between 6am and 6pm Monday to Friday.

6. In relation to the casual rate of pay the MUA sought:

10.4 Casual employees

- (a) A casual employee is one engaged and paid as such. A casual employee's ordinary hours of work are the lesser of 38 hours per week or the hours required to be worked by the employer.
- (b) For each hour worked, a casual employee will be paid no less than 1/1976th of the minimum annual rate of pay for their classification in clause **Error! Reference source not found.**, plus a casual loading of 127.5%.

7. The MUA's submission indicated that the proposed clause was sourced from clause 33.1 of the *Professional Divers' Maritime Union of Australia Award 2002*. (At tab 1 of the MUA Bundle we provide a copy of the MUA's submission)

8. The *Professional Divers' Maritime Union of Australia Award 2002* provided that the hourly rate for casuals working inshore was to be calculated as follows:

29.3 Casual rate of pay

A casual employee shall be paid an hourly rate with a minimum payment of eight hours. The rate is 1/33 of the weekly rate plus twenty percent.

9. A copy of the *Professional Divers' Maritime Union of Australia Award 2002* is tab 2 of the MUA Bundle.
10. On the same day, the Australian Mines and Metals Association (**AMMA**) proposed a draft diving award (At tab 3 of the MUA Bundle we provide a copy of AMMA's submission).

11. Clause 16.2 of AMMA's draft provided:

16.2 Professional Diving (Inshore)

- (a) The ordinary hours of work shall not exceed 6 hours and 36 minutes per day which may be worked between 6am and 6pm Monday to Friday;
- (b) Work undertaken prior to the spread of hours provided is 16.2(a) for which overtime rates are payable shall be deemed for the purposes to this clause to be part of the ordinary hours of work;
- (c) The spread of hours provided by 16.2(a) may be altered by up to 1 hour by mutual agreement between the employer and employees;
- (d) Where employees are not employed on diving operations such as during the full 6 hours and 36 minutes in any one day, the employer shall have the right to use the services on other work for any time remaining.

12. Clause 10.2(b)(ii) of AMMA's draft provided:

professional diving industry (inshore) - no less than 1/33rd of the minimum weekly rate of pay for their classification in clause 13 Classifications and minimum wage rates, plus a casual loading of 20%;

13. On 25 September 2009, a Full Bench of the AIRC published an exposure draft³.

14. Clause 21.4 of the exposure draft adopted the wording of clause 16.2 of the draft award proposed by AMMA.

15. In relation to the hourly rate for casuals the Full Bench determined not to adopt the submissions of either the MUA or AMMA and created a clause in the following terms:

A casual employee will be paid per hour 1/38th of the relevant minimum wage in clause 13 – Classifications and minimum wage, plus a loading of 25%.

16. This was the first time that the casual rate of pay was calculated in this manner.

17. On 4 December 2009, the *Professional Diving Industry (Industrial) Award* was published relevantly in the same terms as the exposure draft.

18. These clauses were unaltered by the Modern Award Review 2012.

19. In this 4 yearly review the inconsistency between the hours per week for in shore divers and the casual rate of pay was identified.

³ [2009] AIRCFB 865.

20. Both the AWU⁴ and the MUA⁵ supported the preservation of the 33 hour week.
21. In its submissions of 31 December 2015 the MUA submitted that the award history was an appropriate basis to retain the 33 hour week but requested that the Commission facilitate an evidentiary case similar to that undertaken in *Stevedoring Industry Award 2010*⁶ if the Commission considered that further evidence was required to satisfy the Commission that there is merit in retaining the 33 hour week. The Commission did not accede to that request⁷ and held that “there is no evidentiary justification for maintaining a distinction in ordinary hours of work as between inshore and offshore diving.”⁸
22. The variation made by the Full Bench had the effect of reducing the hourly rate for casual (in shore) divers. The Pay Guide published by the FWO on 28 June 2016 provided an hourly rate for full time inshore divers of \$35.64 and an hourly rate of \$28.51 for casuals. These rates applied from 1 July 2016. The Pay Guide published by the FWO on 29 June 2017 provided reduced those rates to \$24.76 and \$30.95 respectively. Copies of these pay guides are behind tab 4 of the MUA Bundle.
23. These pay guides indicate that it was the opinion of the regulator that prior to the determination of the Full Bench on 13 June 2017 that the casual hourly rate for inshore divers was derived by dividing the weekly rate by 33 and adding a loading of 25%.

Historical Background of the 33 hour week for inshore divers

24. The first application for a Commonwealth award of general application to divers was determined by Commissioner Portus on 13 July 1973.⁹ The decision made an interim award for a period of 2 months and was made largely to reflect a consent position of the parties. The application then came before a Full Bench

⁴ Submissions of 24 November 2015.

⁵ Submissions of 31 December 2015.

⁶ [2015] FWCFB 1729

⁷ 4 yearly review of Modern Awards – Award Stage – Group 1 [2017] FWCFB 3177 at [109-110]

⁸ Ibid at [111].

⁹ (1974) 157 CAR 48. (tab 5 of the MUA Bundle)

on 21 August 1973 in relation to matters prescribed by s 31 of the Conciliation and Arbitration Act 1904.

25. The application were then arbitrated before Commissioner Portus. The decision¹⁰ making the award records the matters that were not agreed and upon which arbitration was required. The hours of work was not a matter upon which arbitration was required.
26. The award made by Commissioner Portus recorded in the preamble:

Save and except clause 21 – annual leave - and clause 27 – hours – which are matters to be dealt with under section 31 of the abovementioned Act.
27. A Full Bench comprising Justice Moore, President, Justice Gaudron and Mr Commission McCloghry on 6 May 1974 deleted this preamble thereby making the hours of work clause. That clause provided for a 33 hour week.
28. These decisions do not shed any light on the basis for the 33 hour week.
29. As AMMA identified in its submissions of 27 January 2016 the transcript of proceedings before Portus C contains a reference to the *Bridge and Wharf Carpenters (State) Award*.
30. In *Re Standard Hours – Carpenters-Divers; In Re Bridge and Wharf Carpenters (State) Award (No 1) (1947) AR 66 Ferguson J* after a public inquiry into the ordinary hours of carpenter-divers determined that their ordinary hours should not exceed 6 hours and 36 minutes per day, Monday to Friday. The decision makes reference to two matters to justify the hours:
 - (a) The hours are a recognition that the class of employees is engaged in work prejudicial to health (at p 68);
 - (b) The Australian Standards for work in compressed air suggested that for working at depths between 0 and 42 feet a work should be performed in two periods of three hours with fifteen minutes at surface after each one and a half hours. (at 69)

¹⁰ (1974) 158 CAR 85 at 86 tab 6 of the MUA Bundle)

Concerns of members of the MUA

31. Members of the MUA have posted comments on the MUA's Facebook page venting their views in relation to the reduction in their hourly rate of pay. Copies of those comments are tab 8 of the MUA Bundle. The comments can be summarised as follows:

(a) [REDACTED]

Can anyone explain why we've just been fkd with a pay cut to the award from 'Fair Work' Australia? Was \$35.64 p/h and from 1 Jul 17 it's \$31.98. The hell's going on with that? Since when do you go backwards in an award? That's over a 10% pay cut! The award is worse than what it was 10 years ago!

(b) [REDACTED]

I noticed that and posted the new award here a few weeks back but just a few people comment about it. Don't know if enough people are aware of that. Rent go up, food price go up but less money for all of us. Can ADAS or anyone do something about it?

(c) [REDACTED]

The award is 31 now? Ya right when I started it was 28, 9 years ago!

(d) [REDACTED]

Rates are dropping across the board for everything - but i do agree that it is a load of bullshit. When someone doing a high risk skilled activity is getting paid less than a trade assistant on a shutdown theres a problem. I don't see it changing unless the demand outweighs the supply like it did a few years back. Unless your a Sat Diver or Offshore in Aussie, there are easier ways to earn a \$\$\$ if your not doing it for the pure love of it

(e) [REDACTED]

So the politicians can have their pay rise this year, though it was decided by an independent tribunal sitting with only 2 members on board and those 2 members are on the board of coal and wealth management to mention just a few. Why would we not be surprised that all in sundry are being screwed, [REDACTED]

(f) [REDACTED]

Effectively a lower hourly rate, longer working week and we should make more money. D**k heads.

(g) [REDACTED]

Glad I got out when I did that is terrible money ... best sent your cv's to woollies or coles.

(h) [REDACTED]

As a casual diver. How can we be judged on a weekly pay rate? No casual diver is guaranteed a full weeks work. When going off our hourly rate. (Which all casual work should) It is a 10% pay decrease

(i) [REDACTED]

I just spent a good while on the phone to Fairwork and was told that there was no reason why there is a wage decrease. He couldn't get an answer from anyone in the office and said that all other awards received a 3.5% increase in line with CPI. I was told that my question has been escalated and I'll be kept in the loop. I'll keep you all in the loop.

.. it sounds like it's the first time it's been questioned and I'm wondering if some bell end put a minus instead of a plus!

(j) [REDACTED]

Absolute joke!

Difference between inshore and offshore work

32. The MUA would like an opportunity to call evidence to demonstrate:

- (a) the fundamental differences between diving work performed offshore and diving work performed inshore. For example in the offshore sector the work is usually performed from dive bells supported by dive support vessels. The divers live in the dive bells. In contrast diving work performed inshore commences from the surface and the time underwater is regulated by dive tables; and
- (b) that the limitation of for inshore divers that work should be performed in two periods of three hours with fifteen minutes at surface after each one and a half hours remains current.

Dated: 18 December 2017



.....
Nathan Keats
Solicitor for the Maritime Union of Australia

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Award Modernisation

Diving Services

(AM2008/68)

SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA

IN SUPPORT OF THE MAKING OF THE DIVING INDUSTRY AWARD 2010

Introduction

1. It is submitted that the Commission should make the Diving Industry Award 2010 in accordance with attachment "A" to these submissions ("modern award"). That modern award combines the application clauses of the two awards which it replaces into a coverage clause.

Coverage

2. This industry award is expressed to cover employers in the Diving Industry and their employees. The industry is defined as :

Diving industry means the provision of recreational diving, professional diving, underwater and related shipboard services in areas within the Commonwealth of Australia or within the adjacent areas as defined in the Petroleum (Submerged Lands) Acts, Commonwealth or State as the case may be and/or such areas as fall within the territorial jurisdiction of the Commonwealth of Australia.

3. The award replaces the following instruments:

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DX: 283 SYDNEY
REF: WGM:NK:TM:811066

AIRC Industry	Publication Title	Pub ID
Diving Services	Recreational Diving Industry Award 2001	AP812348
Diving Services	Professional Divers' Maritime Union of Australia Award 2002	AP814932

Terms of the Modern Award and their source

4. The table below sets out the source of each of the terms of the Modern Award.

CLAUSE	SOURCE
Clause 1 – Title -	New
Clause 2 – Commencement date	Model provision
Clause 3 – Definitions and interpretation	Model provision plus <ol style="list-style-type: none"> 1. “Working time for an instructor” from clause 9.1 of Recreational Diving Industry Award 2001 2. All other definitions from clause 12 of Professional Divers’ Maritime Union of Australia Award 2002
Clause 4-coverage of the award	New – combination of clause 5 of Recreational Diving Industry Award 2001 and clause 5 of Professional Divers’ Maritime Union of Australia Award 2002
Clause 5-access to the award and the NES	Model provision
Clause 6 – NES and this award	Model provision
Clause 7 -- award flexibility	Model provision
Clause 8 – consultation	Model provision
Clause 9 – dispute resolution	Model provision
Clause 10 – types of employment	<ol style="list-style-type: none"> 1. Clauses 10.1-10.3 and 10.4(d) from clause 15 of Recreational Diving Industry Award 2001 2. Clause 10.4(b) is from clause 13.3.3(d) of Professional Divers’ Maritime Union of Australia Award 2002

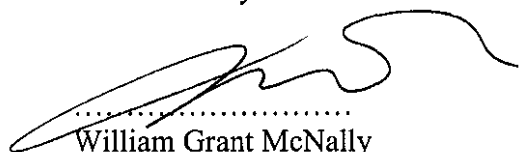
	<ol style="list-style-type: none"> 3. Clause 10.5-10.7 from clause 15.4 of Recreational Diving Industry Award 2001 4. Clause 10.4(a) Model provision 5. Clause 10.4(b) from clause 18.3 of Recreational Diving Industry Award 2001 with the loading increased to 25% in accordance with the Full Bench decision 6. Clause 10.4(c) model provision 7. Clause 10.4(e) from clause 13.3.2 of Professional Divers' Maritime Union of Australia Award 2002 8. Clause 10.4(f) from clause 13.3.3(a) of Professional Divers' Maritime Union of Australia Award 2002
Clause 11 – termination of employment	Model provision
Clause 12 – redundancy	Model provision
Clause 13 – minimum wages	<ol style="list-style-type: none"> 1. Clause 13.1(a) from clause 18.1 of Recreational Diving Industry Award 2001 2. Clause 13.1 (b) & (c) from clauses 15.1 and 29.1 respectively from the Professional Diving Award 2002;
Clause 14 - Allowances	<ol style="list-style-type: none"> 1. Clause 14.1 from clause 20 of Recreational Diving Industry Award 2001 2. Clause 14.2 from clause 16 of Professional Divers' Maritime Union of Australia Award 2002 3. Clause 14.3 from Clause 30 of Professional Divers' Maritime Union of Australia Award 2002
Clause 15 – District allowances	Model provision
Clause 16 – Accident pay	Model provision
Clause 17 – Higher Duties	Clause 17 is from clause 11 of the Professional Divers' Maritime Union of Australia Award 2002
Clause 18 – Payment of wages	From clause 18 of Recreational Diving Industry Award 2001
Clause 19 - Superannuation	Model provision
Clause 20 – ordinary hours of work and rostering	<ol style="list-style-type: none"> 1. Clause 20.2 and 20.3 from clause 21 of Recreational Diving Industry Award 2001 2. Clause 20.4 is from clause 33.1 of Professional Divers' Maritime Union of Australia Award 2002.
Clause 21 – rostering	<ol style="list-style-type: none"> 1. Clause 21 is from clause 21 Professional Divers' Maritime Union of Australia Award 2002.
Clause 22 - breaks	<ol style="list-style-type: none"> 2. Clause 22.1 from clause 22.2 of Recreational Diving Industry Award 2001 3. Clause 22.2 from clause 22.1 of Recreational Diving Industry Award 2001

Clause 23 – Overtime and penalty rates	<ol style="list-style-type: none"> 1. Clause 23.2(a) is from clause 23.2 of Recreational Diving Industry Award 2001. 3 hours for in shore divers from clause 35 of Professional Divers’ Maritime Union of Australia Award 2002. 2. Clause 23.2(b) and (c) are from clause 34 of Professional Divers’ Maritime Union of Australia Award 2002 3. Clause 23.3 from clause 38.4 of Professional Divers’ Maritime Union of Australia Award 2002
Clause 24 – annual leave	<ol style="list-style-type: none"> 1. Clause 24.2 is from clause 24.4 of Recreational Diving Industry Award 2001
Clause 25 – Personal/carer’s and compassionate leave	<ol style="list-style-type: none"> 1. Model provision 2. Clause 25.2 is clause 23.4 and clause 37.3 of Professional Divers’ Maritime Union of Australia Award 2002. It reflects unique conditions for the industry
Clause 26 – Community Service leave	Model provision
Clause 27 – public holidays	Model provision
Schedule A – classifications	Preamble from clause 14 of Recreational Diving Industry Award 2001

Conclusion

5. We submit that the Diving Industry Award 2010 should be made in the terms sought.
6. Bill McNally and Nathan Keats will attend the public consultations on 4 August 2009 to answer questions and make submissions in relation to draft awards proposed by other interested organisations.

Dated: 24 July 2009



.....
William Grant McNally
Solicitor for the Maritime Union of Australian and
The Australian Institute of Marine and Power Engineers



.....
Nathan Keats

Diving Industry Award 2010

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Part 1—Application and Operation

1. Title

This award is the *Diving Industry Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Fair Work Act 1996* (Cth)

Atmospheric Diving Systems (ADS) will mean a manned diving system such as OMB, ARMS, MOB, JIM, WASP and similar systems which allow an operator to work underwater without being subjected to greater than atmospheric pressure.

Commission means the Australian Industrial Relations Commission or its successor

Designated Assembly Point means the point from which the employer provides transport to the designated point of embarkation.

Designated Point of Embarkation means the point from which transport to the offshore location is provided.

Diving industry means the provision of recreational diving, professional diving, underwater and related shipboard services in areas within the Commonwealth of Australia or within the adjacent areas as defined in the Petroleum (Submerged Lands) Acts, Commonwealth or State as the case may be and/or such areas as fall within the territorial jurisdiction of the Commonwealth of Australia.

employee has the meaning in the Act

employer has the meaning in the Act

enterprise award has the meaning in the Act

enterprise NAPSA means a NAPSA derived from a State award which immediately prior to 27 March 2006 applied only to a single business or part of a single business

NAPSA means notional agreement preserving a State award and has the meaning in the Act

NES means National Employment Standards

Offshore Exploration and Development Diving means and include all diving from oil drilling rigs, hydrocarbons exploration vessels or platforms and diving in or in

connection with the construction and maintenance of platforms and associated submarine pipelines.

Professional Diving (Inshore) means employees qualified as a ADAS diver (parts 1,2,3 that is trained to the appropriate level of AS 2815.1, .2, .3) who undertakes a diving operation in coastal or inland waters under the jurisdiction of an Australian State or Territory legislation and in keeping with the provisions of the operational standard AS/NZS 2299.1:2007

Professional Diving (Offshore) means employees qualified as a ADAS diver (parts 3,4 that is trained to the appropriate level of AS 2815.3 or .4) who undertakes an offshore petroleum diving operation conducted outside the State or Territory boundaries but within the jurisdiction of the Commonwealth under the legal requirements of the Offshore Petroleum Act 2006 and the Petroleum (Submerged Lands) (Diving Safety) Regulations 2007.

Recreational diving means a diving other than Professional Diving (Inshore) or Professional Diving (Offshore).

Saturation Techniques means procedures in accordance with which a diver is continuously subjected to an ambient pressure greater than atmospheric pressure so that the body tissues and blood become saturated with the inert element of the breathing mixture.

Short Term Project will be a continuous project not exceeding 56 days.

Standard rate means the rate of pay for a diver in clause 13.1(c).

Underwater Inspector means an employee engaged in or in connection with the inspection of underwater structures.

Working time for an instructor means instruction time plus pre and post dive briefings of a maximum 30 minutes duration each.

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

4.1 This industry award covers employers who are engaged in the Diving industry and their employees in the classifications listed in clause 13 to the exclusion of any other modern award.

4.2 Exclusions

This award does not cover:

- (a) an employer bound by an enterprise award or enterprise NAPSA with respect to any employee who is covered by the enterprise award or enterprise NAPSA;
- (b) an employee excluded from award coverage by the Act; or

4.3 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the

work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The NES and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

- (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 7.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.6 Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 7.8 The agreement may be terminated:
- (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the employer and the individual employee.
- 7.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for

alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

- 9.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2 If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3 The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4 Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

10.1 Employees under this award will be employed in one of the following categories:

- (a) full-time employees; or
- (b) casual employees

10.2 Full-time employees

- (a) All employees except casual employees must be employed by the week.
- (b) A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.
- (c) Where employment is of less than four weeks' duration employees will be paid casual rates.

10.3 Full-time employees - boat trip

- (a) A **day trip** means a trip that takes place within a period of 24 hours, ie. the employee leaves and returns within a period of 24 hours.
- (b) A **long trip** means a trip that exceeds a period of 24 hours.
- (c) When a full-time employee is on a day trip, the employee is entitled to a minimum payment of six hours ordinary time pay.
- (d) When a full-time employee is on a long trip, the employee is entitled to a minimum payment of six hours ordinary time pay for each 24 hour period of duration of the trip.

10.4 Casual employees

- (a) A casual employee is one engaged and paid as such. A casual employee's ordinary hours of work are the lesser of 38 hours per week or the hours required to be worked by the employer.
- (b) For each hour worked, a casual employee will be paid no less than 1/1976th of the minimum annual rate of pay for their classification in clause 13, plus a casual loading of 127.5%.
- (c) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment. The loading constitutes part of the casual employee's all purpose rate.
- (d) Casual employment is to be terminated by four hours' notice on either side, or by the payment or forfeiture of four hours' wages as the case may be.
- (e) An employee employed as a casual shall not subsequently be employed by that employer until the expiration of a period equivalent to the preceding period of duty. This paragraph shall not apply where the employee must be employed

prior to the expiration of that equivalent period because no other suitable employee is available for employment.

- (f) A casual employee shall only be employed in a casual capacity for a continuous project period not exceeding 56 days after which such employee will be deemed as permanent.

10.5 Shop work

A casual employee engaged in shop work which includes classroom instruction is entitled to a minimum payment of two hours ordinary time pay.

10.6 Field work

Where field work takes place within a period of 24 hours, a casual employee is entitled to a minimum payment of four hours ordinary time pay.

10.7 Boat trip

- (a) When a casual employee is on a day trip that is in excess of six hours, the employee is entitled to a minimum payment of six hours ordinary time pay.
- (b) When a casual employee is on a day trip of less than six hours, the employee is to be paid the actual hours worked.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 11.3.

12.5 Transitional provisions

- (a) Subject to clause 12.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:
 - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) This clause ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Classifications and minimum wage rates

13.1 Adult employees

- (a) A full-time adult employee engaged in recreational diving must be paid an annual rate as set out below.

Level	Minimum rate per annum
	\$
Diving Instructor	30932.40
Dive master	30932.40

- (b) A full-time adult employee engaged in professional diving (offshore) must be paid an aggregate monthly rate as set out below.

Classification	Minimum Rate per Calendar Month	Aggregate Salary Factor	Total Rate per Calendar Month
Diving Superintendent	3695.39	4323.61	8019
Diving Supervisor	3446.44	3997.87	7444
Supervisor (ADS Operations)	3446.44	3997.87	7444
Hyperbaric Welder	3322.50	3854.10	7177
Life Support Technician	3143.88	3584.02	6728
Senior Operator (OMB Operations)	3143.88	3584.02	6728
Systems Maintenance Technician	2936.75	3318.53	6255
Diver	2753.75	3056.66	5810
Operator (ADS Operations)	2753.75	3056.66	5810
Diver's Attendant	2380.43	2570.86	4951

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- (c) A full-time adult employee engaged in professional diving (inshore) must be paid a weekly rate as set out below.

Classification	Rate of pay per week
	\$
Diving supervisor	1048.83
Hyperbaric welder	807.83
Diver	771.23
Diver's attendant	629.48

- (d) The classification structure and definitions for the above classifications are contained in Schedule A—Classification Structure.

14. Allowances

14.1 Allowances specific to recreational divers

(a) Accommodation and meals offshore

- (i) The employee will be reimbursed for accommodation purchased whilst on board a vessel travelling offshore for a journey of one or more nights. This provision will not apply where accommodation is provided by the employer.
- (ii) The employee will be reimbursed for all meals purchased whilst on board a vessel travelling offshore for a journey of one or more nights. This provision does not apply where the meals are provided by the employer.

(b) Distant work on shore

(i) Definition

- (I) For the purpose of this clause **distant work** means that the distances or the travelling facilities to and from places of work make it reasonably necessary that employees live and sleep at some place other than their usual place of residence at the time of commencing work.
- (II) If employees whilst employed on distant work change their usual place of residence, such new place of residence or any further change of residence (if made whilst employed on distant work) will be regarded as the employee's usual place of residence for determination of whether the work is distant work within the meaning of this clause.

(ii) Travel to and from distant work

- (I) Employees engaged on distant work (as defined in 14.1(b)(i)(I)) and who are required to travel, with equipment, to and from work will be reimbursed for the cost of such travel unless the employer provides the means of travel.
- (II) Where an employee is recalled and required to return on more than one occasion to the place of work, the employer will reimburse the employee the cost of obtaining conveyance on each occasion, provided that where the employer provides such conveyance, the obligation with respect to payment or reimbursement shall have been fulfilled.
- (III) The employer will not reimburse the employee for the cost of travel and travelling time of an employee who:
 - leaves the employment of their own free will before the completion of the job or before being three months in such employment, whichever happens first, or
 - is discharged for incompetence within one week of engagement; or
 - is discharged for misconduct.

(iii) Rate of pay for travel to and from distant work

- (I) The rate of pay for time occupied in travelling to and from distant work will be ordinary rates, except on Sundays and holidays when it will be time and one-half.
- (II) Employees will also be paid an amount of \$5.60 to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.
- (III) The maximum travelling time to be paid for is twelve hours out of every 24 hours, or when a sleeping berth is provided by the employer for all night travel, eight hours out of every 24 hours.

(iv) Accommodation and meals

- (I) The employee will be reimbursed for accommodation purchased whilst on distant work. The provision will not apply where accommodation is provided by the employer.
- (II) The employee will be reimbursed for all meals purchased whilst on distant work. This provision does not apply where the meals are provided by the employer or where the provisions of clauses 14.1(b)(iv)(III) and 14.1(b)(iv)(IV) apply.
- (III) In special circumstances employees, by mutual agreement with the employer, may be paid an allowance of \$281.00 per week or such greater amount as may be agreed on, in return for the

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employees being responsible for securing their own accommodation and meals.

- (IV) In the case of broken parts of the week occurring at the beginning or ending of employment on a distant job, the allowance is \$40.20 per day or 1/7 of any other weekly amount agreed on.

(c) Vehicle allowance

Employees who consent to use their own vehicle in the course of their employment, for the transportation of themselves and their personal diving equipment will be paid an allowance of 50 cents per kilometre.

(d) Language Allowance

The language allowance of \$2061.00 per annum is payable for the required skill to instruct in a language other than English, where required by the employer.

14.2 Allowances specific to professional divers working offshore

(a) Disability allowance

Employees will receive an additional payment of 8% of the standard rate for each on-duty day (or in the case of casual employees 9.49% of the standard rate per on-duty day) on a support vessel whether dynamically positioned or anchor moored in recognition of all disabilities and work requirements associated with living and working from such a vessel. The amounts shown reflect payment for the on-duty and off-duty period.

(b) Diving allowances

(i) Diving other than ADS Operations

- (I) In addition to the wage rates set out in 13.1, a diver shall be paid a diving allowance of 0.47% of the standard rate per metre or 0.14% of the standard rate per foot or equivalent pressure with a minimum allowance calculated as fifty (50) times the diving allowance per foot except where a diver is engaged in a dive using saturation techniques in which case the minimum allowance shall be calculated as two hundred and fifty (250) times the diving allowance per foot.

- (II) Such allowance shall be payable once in respect of the greatest depth or equivalent pressure incurred in each period worked. For the purposes of this subclause a period worked shall begin from the time the diver enters the water or is subject to greater than atmospheric pressure and shall end 12 hours later. Further periods worked shall begin each 12 hours if at the end of a period worked or a further period worked, a diver is still subject to greater than atmospheric pressure.

(ii) ADS Operations

In addition to the wage rates set out in 13.1, a Senior operator (OMB Operations) and Operators (ADS Operations) shall be paid a diving allowance of 0.23% of the standard rate per metre or 0.07% of the standard rate with a minimum allowance calculated as two hundred and fifty (250) times the diving allowance per foot. Such allowance shall be payable only once in respect of dives commenced within a twelve hour period.

(iii) Practice or training dives

The diving allowances referred to above shall not be paid to persons performing practice or training dives or to an Operator (ADS Operations) during the first twelve month period of training. Underwater services shall not be performed for the employer during practice or training dives.

(iv) Diving superintendents and diving supervisors

(I) Diving superintendents, diving supervisors and supervisors (ADS Operations) shall receive twenty per cent and life support technicians shall receive fifteen per cent of the average diving allowance paid to divers or operators (ADS Operations) under their control. Average diving allowance will be calculated daily by dividing the total diving allowance earned in each day or part thereof by divers or operators (ADS Operations) under the control of a Diving superintendent, Diving supervisor or Supervisor (ADS Operations) by the number of divers or operators (ADS Operations) who earned diving allowance in that day.

(II) Surface oriented dives made in conjunction with saturation diving operations shall be calculated separately for the purpose of calculating the average diving allowance.

(c) Living away from home allowance

An allowance of \$43.04 per day shall be paid to each employee for each day or part thereof of their duty period offshore or in circumstances where employees would normally be working offshore and are temporarily accommodated onshore away from their home. With the exception of annual leave the allowance shall not be payable during periods of leave or authorised absences nor during periods in which the employee is specifically engaged on shore based duties including equipment mobilisation or demobilisation where the employee is able to live at home.

(d) Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography shall, in addition to the salary rate applicable to their classification, be paid an allowance for each day or part thereof on which they are engaged in such duties. The allowance shall be 7.04% of the standard rate per day.

(e) Hyperbaric welding allowance

- (i) The hyperbaric welding rate specified in 13.1 shall apply from the date an employee is required to carry out duties related to the welding to be performed. the payment shall cease when the employee is no longer required by the employer to carry out tasks related to the welding.
- (ii) A hyperbaric welder shall be entitled to a payment of 0.058% of the standard rate per linear millimetre for a successfully completed weld. For the purpose of this clause, "successfully completed" means a weld which has been accepted by the client without the necessity for repair.
- (iii) Provided that in lieu of 14.2(e)(ii) a hyperbaric welder shall be entitled to payment of 0.39% of the standard rate per linear millimetre for a weld which requires repair prior to being accepted by the client.
- (iv) The payments prescribed in 14.2(e)(ii) and 14.2(e)(iii) shall apply only to members of the nominated hyperbaric welding team who have been coded for that particular hyperbaric welding task.

(f) Loss Of Personal Effects Allowance

An employee will be reimbursed up to \$2049.00 for the loss of personal effects normally required while offshore, which are lost due to fire, explosion, collision, foundering or collapse of a fixed platform, vessel or work barge. Provided that no payment will be made where the employee's loss is made good by any insurance policy or other claim on the employer or any third party.

(g) Transportation And Accommodation Allowances

- (i) At the beginning and end of each on-duty period the employer shall provide transport between the designated assembly point and the work site. Employees are required to present themselves at the designated point of embarkation by use of the transport provided by the employer or otherwise at their own expense. If the transport provided is in the form of a hired vehicle the employee shall be responsible for the care of the vehicle and if an accident occurs while the employee is in charge of the vehicle and is proven to be under the influence of illegal drugs or alcohol, the employer shall have the right to recover from the employee any cost incurred by the employer resulting from such accident.
- (ii) During the period of duty, employees who cannot reasonably return to their usual place of abode shall be reimbursed the cost of reasonable accommodation and meals. Where such accommodation and meals are provided by the employer the provisions of this clause do not apply.
- (iii) The employer shall notify the employees of the designated assembly point and point of embarkation for each job.

(h) Clothing And Equipment Allowances

- (i) Employees shall be reimbursed for the purchase of clothing and equipment required for the performance of duties. The provisions of this clause do not apply if the employer provides such clothing and equipment.

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- (ii) Where a permanent employee is required to supply and maintain his/her own wetsuit and required to supply approved safety footwear she or he will be paid an allowance of \$108.61 per calendar month.
 - (iii) In the case of a casual employee, the allowance will be \$8.75 per day.
- (i) **Medical examination allowance**
- (i) Where the employer requests that a prospective employee undertake a pre-employment medical examination, the employee shall be reimbursed for the costs of attending such examination.
 - (ii) Where Commonwealth or State and Territory Legislation require that employees bound by this Award must submit to medical examination, then upon employees complying with such Act or Regulation, the employer will reimburse the employee for all costs associated with such examination.

(j) **Insurance reimbursement allowance**

Where the employee elects to obtain insurance cover against death from any cause with a sum insured of \$110,000 to apply during the period of the employees employment, then upon presentation of verifiable evidence of the purchase of such insurance policy, the employer shall reimburse the employee for the cost of the policy. The provisions of this clause do not apply if the employer provides such insurance coverage directly.

14.3 Allowances specific to professional divers working inshore

(a) **Diving allowance**

- (i) A diver shall be paid a diving allowance of 0.13% of the standard rate per foot or 0.43% of the standard rate per metre of water or equivalent pressure. Such allowance shall be payable once in respect of the greatest depth or equivalent pressure incurred each day.
- (ii) Provided that the diving allowance specified herein shall only apply to dives made in excess of 50 feet or fifteen metres of water or equivalent pressure or when decompression is necessary whichever shall occur first and shall be calculated from the surface to the maximum depth or equivalent pressure attained during the dive.
- (iii) The diving allowance referred to above shall not be paid to persons performing practice or training dives. Underwater services shall not be performed for the employer during practice or training dives.
- (iv) Diving supervisors shall receive twenty percent of the average diving allowance paid to divers under their control. Average diving allowance will be calculated daily by dividing the total diving allowance earned by divers whilst under the control of a diving supervisor by the number of divers who earned diving allowance on that day.

(b) Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography shall, in addition to the salary rate applicable to their classification, be paid an allowance for each day or part thereof on which they are engaged in such duties. The allowance shall be 6.51% of the standard rate per day.

(c) Hyperbaric welding allowance

(i) The hyperbaric welding rate specified in 14.3(c)(ii) shall apply from the date an employee is required to carry out duties related to the welding to be performed. The payment shall cease when the employee is no longer required by the employer to carry out tasks related to the welding.

(ii) A hyperbaric welder shall be entitled to a payment of 0.49% of the standard rate per linear millimetre for a successfully completed weld. For the purpose of this clause, "successfully completed" means a weld which has been accepted by the client without the necessity for repair.

(iii) Provided that in lieu of 14.3(c)(ii) a hyperbaric welder shall be entitled to payment of 0.33% of the standard rate per linear millimetre for a weld which requires repair prior to being accepted by the client.

(iv) The payments prescribed in 14.3(c)(ii) and 14.3(c)(iii) shall apply only to members of the nominated hyperbaric welding team who have been coded for the particular hyperbaric welding task.

(d) Annual medical exam allowance

Employees who are subjected to greater than atmospheric pressure shall be reimbursed the cost of an annual medical examination which shall include but not be limited to the requirement set out in Appendix A of the Standards Association of Australia Underwater Air Breathing Operations Standard AS2299. The provisions of this clause do not apply where the employer provides for the service.

(e) Meal allowance

Employees who are required to work overtime for more than two hours on any day after the usual finishing time shall be entitled to an allowance of \$6.83 meal money unless they had been notified the previous day that their services would be required or a hot meal is provided by the employer. Provided that where employees are notified that they will be required to work overtime the following day and such order is cancelled after they have left work on the day on which they were notified they shall be paid the sum of \$6.83 meal money.

(f) Fares And Travelling Time Allowance

(i) Employees who commence and finish work within a 50 kilometre radius of the General Post Office in the city or town in which the employer's registered business address is situated shall receive a fare allowance of \$11.00 per day.

- (ii) Where employees commence and finish work beyond the 50 kilometre radius referred to in 14.3(f)(i) they shall be reimbursed for the actual fares hereof incurred and all time spent travelling beyond this radius shall be paid at ordinary rates.

(g) Distant Work allowance

- (i) For the purpose of this clause distant work is that in respect of which the distances or the travelling facilities to and from such places of work make it reasonably necessary that employees shall live and sleep at some place other than their usual place of residence at the time of commencing such work. Provided that if employees whilst employed on distant work change their usual place of residence such new place of residence or any further change thereof (if made whilst employed on distant work) shall be their usual place of residence for determination of whether the work is distant work within the meaning of this clause.
- (ii) Employees engaged on distant work shall be conveyed with equipment to and from work at their employer's expense. Such conveyance shall be made only once unless the employee is recalled and sent again to the place of work, when it shall be made each time that this happens. Provided that return fares and travelling time need not be paid to employees who:
 - (I) Leave the employment of their own free will before the completion of the job or before being three months in such employment, whichever first happens, or is discharged for incompetence within one week of engagement.
 - (II) Is discharged for misconduct.
- (iii) The rate of pay for time occupied in travelling to and from distant work shall be ordinary rates, except on Sundays and holidays when it shall be time and one-half. Employees shall also be paid an amount of \$5.30 to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.
- (iv) The maximum travelling time to be paid for shall be twelve hours out of every twenty-four hours, or when sleeping berth is provided by the employer for all night travel, eight hours out of every twenty-four hours.
- (v) On distant work employees may be paid, by mutual agreement with the employer, an allowance of \$277.36 week or such greater amount as may be agreed upon, in return for which employees shall be responsible for securing their own accommodation and meals. In the case of broken parts of the week occurring at the beginning or ending of the employment on a distant job the allowance shall be \$39.66 per day or 1/7 of any other weekly amount agreed upon. The provisions of this clause do not apply if the employer provides reasonable board and lodging.
- (vi) Employees who consent to use their own vehicle in the course of their employment shall be paid an allowance of \$0.58 per kilometre. This

allowance is for the use of the vehicle by the employee for transporting the employee and the employee's personal diving equipment.

(h) Diving Clothing And Equipment Allowance

Employees who supply their own wet suits and personal diving equipment including weightbelt and diving knife shall be paid, in addition to the ordinary rate, an allowance of \$7.08 per day on each day on which the equipment is used.

(i) Protective Clothing And Equipment Allowance

(i) Employees should be reimbursed for the cost of all industrial protective clothing and safety equipment other than that prescribed 14.3(h) which is required by the employer to be worn. This provision does not apply if the clothing and the equipment is supplied by the employer.

(ii) Casual employees may, in lieu of provision of footwear, be paid an amount of \$2.53 per day of employment for the purchase of approved safety footwear. This allowance shall not be payable where safety footwear is not required to be worn.

14.4 Adjustment of expense related allowances

(a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

(b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Accommodation	All groups
Language	All groups
Living away from home allowance	All groups
Meal allowance	Take-away and fast foods sub group
Personal effects allowance	All groups
Vehicle and car allowance	Private motoring sub-group

15. District allowances

15.1 Northern Territory

An employee in the Northern Territory is entitled to payment of a district allowance in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth):

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- (a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under that Act had applied to the employee; and
- (b) that would have entitled the employee to payment of a district allowance.

15.2 Western Australia

An employee in Western Australia is entitled to payment of a district allowance in accordance with the terms of a NAPSA or an award made under the *Workplace Relations Act 1996* (Cth):

- (a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under that Act had applied to the employee; and
- (b) that would have entitled the employee to payment of a district allowance.

15.3 This clause ceases to operate on 31 December 2014.

16. Accident pay

16.1 Subject to clause 16.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

16.2 The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

16.3 This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.

16.4 This clause ceases to operate on 31 December 2014.

17. Higher Duties

17.1 Where employees perform the duties of a higher paid classification for a day or part thereof they shall be paid at the higher rate for that day and an equivalent day in their off duty period.

- 17.2 For the purposes of this clause a higher paid classification shall mean a classification which with salary and allowances is a higher paid classification than the employee's current classification.

18. Payment of wages

- 18.1 Wages will be paid weekly or fortnightly unless otherwise agreed between the employer and the employee.
- 18.2 Wages will be paid by cash bank cheque or electronic funds transfer (EFT).
- 18.3 Employees kept waiting for their wages on pay day for more than fifteen minutes after the usual time for ceasing work must be paid overtime rates after that fifteen minutes.
- 18.4 On termination of employment, wages due to employees must be paid to them on the day of such termination or forwarded to them by post on the next working day.

19. Superannuation

19.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

19.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

19.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 19.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

- (c) The employer must pay the amount authorised under clauses 19.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or (b) was made.

19.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 19.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 19.2. and pay the amount authorised under clauses 19.3(a) or 19.3(b) to one of the following superannuation funds:

- (a) Maritime Super;
- (b) AMP Superannuation Savings Trust (MOST, AIMPE or MODIF); or
- (c) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

19.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or 19.3(b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
 - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
 - (ii) the employee remains employed by the employer.

Part 5—Hours of Work and Related Matters

20. Ordinary hours of work and rostering

- 20.1 This clause supplements Division 2 of the NES which deals with maximum weekly hours.
- 20.2 The ordinary hours of work for are an average of 38 hours per week but not exceeding 152 hours over a period of 28 days.
- 20.3 The ordinary hours of work may be worked on any day of the week to a maximum of 12 hours on any one day.

20.4 In shore divers

- (a) The ordinary hours of work for professional divers working inshore shall not exceed six hours and 36 minutes per day which may be worked between 6.00am and 6.00pm Monday to Friday.

21. Rostering

This clause only applies to professional divers working in the offshore

21.1 Leave accrual

For each on-duty day worked employees other than casual employees shall receive one paid off-duty leave day.

21.2 Rosters

The employer shall establish a regularly recurring roster of equal on-duty and off-duty periods for each work site. The on-duty and off-duty periods shall each be of 14 days' duration, provided that other equal periods may be worked by agreement between the parties.

21.3 On-duty period

The on-duty period for employees, other than casual employees shall commence on the day of arrival at the designated point of embarkation to the work site.

21.4 Off-duty period

The off-duty period for employees, other than casual employees shall commence on the day of departure from the work site. Provided that if the employee is held over beyond midnight on his crew change day and/or subsequent days, he shall be paid one days pay at the base rate but he shall not accrue a subsequent leave day.

21.5 Not attending for duty

Employees not attending for duty in a rostered on-duty period other than as provided for elsewhere in this clause shall not receive payment nor accrue off-duty leave days in respect of such period.

21.6 Authorised paid leave

Employees who are absent during a rostered on-duty period for reasons provided for in clauses 16, Accident pay, and 24 Personal/carer's leave and compassionate leave, shall be paid as if on-duty for the period of such absence.

21.7 Authorised unpaid leave

At the request of an employee the employer may grant authorised unpaid leave to that employee. The employee shall not receive payment nor accrue or use paid off-duty leave days in respect of such period of absence. The granting of authorised unpaid leave shall be at the sole discretion of the employer.

21.8 Roster changes by the employer

Where a roster is changed by the employer and the commencement of an employee's on-duty period is advanced, the employee shall be considered to be on-duty from the day of arrival at the designated point of embarkation.

21.9 Roster changes by the employee

Where a roster is changed at the request of an employee the employee shall be either on duty and accruing off-duty leave days or off-duty and using off-duty leave days as provided in 21.3 and 21.4.

21.10 Returning to work early

Where an employee commences duty prior to the commencement of the employee's rostered on-duty period the employee shall be considered to be on-duty from the day of arrival at the designated point of embarkation.

21.11 Prevented from commencing an on-duty period

Where an employee reports for duty at a designated assembly point but cannot be transported to the offshore work site due to weather conditions, insufficient work or other circumstances beyond the employer's control, the period of such delay will be regarded as an on-duty period provided that the employer may gainfully employ the employee onshore.

21.12 Prevented from remaining on-duty

Where during an on-duty period an employee cannot remain at the offshore work or other circumstances beyond the employer's control, such days shall be considered to be on-duty days provided that the employer may gainfully employ the employee onshore.

21.13 Prevented from commencing off-duty period

Where due to weather conditions or other circumstances an employee is delayed offshore and prevented from commencing a rostered off-duty period the employee shall be on-duty and accruing off-duty leave days until the employee actually commences an off-duty period.

21.14 Imbalance of off-duty leave days owed and actually taken

Pursuant to the provisions of this clause an employee may accrue more off-duty leave days than are taken or take more off-duty leave days than have been accrued. Where the employee accrues more off-duty leave days than are taken the balance shall be recorded and taken at another time. Where the employee takes more off-duty leave days than are accrued they shall be deducted from any balance of off-duty days yet to be taken. Where that results in a negative balance of off-duty leave days that number of days will be subtracted from the employee's pay for that month. A positive balance of off-duty days owed to the employee on termination shall be paid to the employee at that time.

21.15 Work on first day of off-duty period

To allow a smooth change over of on-duty and off-duty crews employees will normally be required to work for some period of the first day of their off-duty period on the understanding that they will on average not work a corresponding period on the first day of their on-duty period.

22. Breaks

22.1 An employee is entitled to an unpaid meal break at a time fixed by mutual agreement between the employer and the majority of employees concerned provided that no employee works more than five (or 3 in the case of a professional diver working inshore) hours without a meal break

22.2 An employee is entitled to a 10 minute paid rest break during the morning or the afternoon without loss of pay at a time mutually agreed between the employer and the employee.

23. Overtime and penalty rates

23.1 Overtime

All time worked in excess of or outside ordinary hours will be paid as overtime.

23.2 Except as provided otherwise in this clause employees will be entitled to be paid:

- (a) a loading of 50% of the ordinary hourly minimum rate of pay for the first two hours and 100% the ordinary hourly minimum rate of pay thereafter.
- (b) All time worked on a Sunday shall be paid for at double time.
- (c) Employees including casual employees who are called back to work after the usual finishing time shall be paid for a minimum of four hours' work at overtime rates.

23.3 Public holidays

An employee will be paid a loading of 150% of the ordinary hourly minimum rate of pay, for any hours, ordinary and overtime, worked on a public holiday.

Part 6—Leave and Public Holidays

24. Annual leave

24.1 The following provisions supplement the NES.

24.2 When an employee takes a period of paid annual leave, the employee will be paid an annual leave loading of 17.5% of the minimum rate of pay for the period in addition to the payment required to be made under the NES.

25. Personal/carer's leave and compassionate leave

25.1 Personal/carer's leave and compassionate leave are provided for in the NES.

25.2 In the event of employees who are required to be subjected to greater than atmospheric pressure suffering any serious illness or injury resulting in inability to perform any work in circumstances in which workers' or accident compensation was not payable, they shall be given an extra 14 on-duty days sick leave with the employer having the right to have them medically examined and approved for sick leave by a doctor nominated by the employer. The provision of 28 on-duty days sick leave is to cover a situation of disabling illness or injury in one year. Disabling illness or injury shall mean an illness or injury which prevents an employee from diving or being subject to greater than atmospheric pressure but not from performing any other activity under the provisions of this award.

26. Community service leave

Community service leave is provided for in the NES.

27. Public holidays

27.1 Public holiday entitlements are provided for in Division 9 of the NES.

27.2 An employee will be paid at the rate of double time and a half with a minimum of four hours work when required to work on a public holiday.

Schedule A—Classification Structure

Preamble

Employees may be required to carry out the duties of deckhands, cooks or skippers in addition to instructing and supervising diving operations, shopwork, interviewing prospective clients and undefined duties.

Diver shall mean an employee trained and certified in accordance with AS 2815 Part 1-3 and experienced in the use of SCUBA and/or SSBA equipment, the physics and physiology of diving, underwater communication systems, use, inspection and maintenance of compressed air supplies, operation and maintenance of underwater tools, preparation and operation of compression chambers (Parts 1 & 2 under supervision), the performance of underwater work, first aid and the relevant legislation.

Diver's Attendant shall mean an employee who has adequate knowledge of underwater work, the signals and communication devices used in diving operations, decompression procedures and equipment used in diving operations. The diver's attendant shall carry out the functions of attending a diver, including assisting the diver to dress and undress, handling hoses and/or lifelines and such other duties as may be assigned by the diving supervisor but shall not be required to perform underwater services.

Dive instructor means an employee trained to train other divers in accordance with AS 4005.2, .3, .4: 2000) and in keeping with the provisions of the operational standard AS/NZS 2299.3:2003

Dive master means an employee trained to the level required of AS 4005.2, .3, .4: 2000 and in keeping with the provisions of the operational standard AS/NZS 2299.3:2003.

Diving Superintendent means an employee placed in charge of a 24 hour diving operation to co-ordinate the diving work and to relieve diving supervisors engaged in that operation where and when necessary.

Diving Supervisor means a diver experienced in diving and diving techniques appointed by the employer in writing to supervise diving operations, to instruct other divers and to be responsible for safe diving practices. The diving supervisor will also be competent to supervise all classes of hydrocarbon exploration and development diving applicable to and appropriate to the particular operation which may include using helium/oxygen or similar mixtures, using submarine observation chambers and operating from submarine working chambers. In addition, the diving supervisor is responsible to the employer for other on-site supervisory functions relating to matters within the scope of this award, including liaison with other companies, supervision of employees, keeping of appropriate records and reports ensuring that all equipment is kept and properly maintained to comply with all rules and regulations and that all expendable items are maintained at an acceptable stock level. An employee shall have worked as a diver for a period of not less than six months before being designated as a diving supervisor.

Hyperbaric Welder shall mean an employee who is a trained and certified diver and is a qualified welder appointed to perform work in such capacity by the employer.

MUA draft Diving Industry Award 2010

Life Support Technician means an employee who will, under the supervision of a diving supervisor, control and monitor all the systems and functions which relate to the life support, safety and health of any person inside hyperbaric chambers used in saturation diving.

Senior Operator (OMB Operations) means an employee appointed as such to operate an observation manipulator bell as "OMB", "ARMS" or "MOB".

Systems Maintenance Technician means an employee engaged specifically to perform maintenance and repair tasks on diving and ancillary equipment. Such an employee shall typically have a relevant trade qualification and be familiar with diving operations.

AP814932 - Professional Divers' - Maritime Union of Australia Award 2002

This AIR consolidated award incorporates all amendments up to and including 24 January 2007 (variation [PR975125](#)).

Clauses affected by the most recent amendment(s) are:

30. Allowances

About this Award:

Printed by authority of the Commonwealth Government Printer.

Disclaimer:

Please note that this consolidated award is prepared by the Australian Industrial Registry and is believed to be accurate but no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of a person acting in reliance thereon.

Copies of official decisions, awards and orders of the Australian Industrial Relations Commission can be accessed at no cost through the Commission's web site (www.airc.gov.au) or purchased from any office of the Australian Industrial Registry.

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. 00731 of 1999)

**SEAMEN'S UNION OF AUSTRALIA, MARITIME INDUSTRY,
PROFESSIONAL DIVERS' AWARD 1992, THE**
(ODN C No. 37758 of 1989)
[Print K3982 [S0279]]

Professional divers

Diving services

COMMISSIONER LARKIN

SYDNEY, 4 APRIL 2002

Award simplification.

ORDER

A. Further to the decision issued by the Commission on 3 April 2002 [[PR916133](#)] the above award is varied as follows:

By deleting all clauses and schedules and inserting the following:

PART I - GENERAL

1. AWARD TITLE

This award shall be known as Professional Divers' - Maritime Union of Australia Award 2002.

2. ARRANGEMENT

This award is arranged as follows:

Part I - General

1. Award title
2. Arrangement
3. Anti-discrimination
4. Commencement date and period of operation
5. Parties bound and coverage of award
6. Relationship to other awards
7. Enterprise flexibility provisions
8. Index of facilitative provisions
9. Disputes settlement procedure
10. Posting of award
11. Higher duties

Part II - Offshore

12. Definitions
13. Contract of employment
14. Stand down
15. Wage rates [PR942338]
16. Allowances [PR942338]
17. Superannuation
18. Accident pay
19. Payment of wages
20. Hours of work
21. Periods of duty
22. Annual leave
23. Sick leave
24. Bereavement leave
25. Jury service

Part III - Inshore

- 26. Definitions [[PR935235](#)]
- 27. Contract of employment
- 28. Stand down
- 29. Wage rates [[PR966965](#)]
- 30. Allowances [[PR975125](#)]
- 31. Payment of wages
- 32. Accident pay
- 33. Hours of work
- 34. Overtime
- 36. Annual leave
- 37. Sick leave
- 38. Public holidays
- 39. Bereavement leave

Schedule A - Respondents

3. ANTI-DISCRIMINATION

- 3.1** It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 3.2** Accordingly, in fulfilling their obligations under the dispute avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 3.3** Nothing in this clause is taken to affect:
- 3.3.1** any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
 - 3.3.2** junior rates of pay;
 - 3.3.3** an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;
 - 3.3.4** the exemptions in s.170CK(3) and (4) of the Act.

4. COMMENCEMENT DATE AND PERIOD OF OPERATION

This award will come into force from 3 April 2002 and shall remain in force for a period of six months.

5. PARTIES BOUND AND COVERAGE OF AWARD

5.1 This award shall be binding upon the Maritime Union of Australia and its members and upon the employers and members of employers' organisations named in schedule A as to the employment by them of all employees whether members of the union or not who are engaged in or in connection with diving in the provision of underwater services in areas within the Commonwealth of Australia or within the adjacent areas as defined in the Petroleum (Submerged Lands) Acts, Commonwealth or State as the case may be and/or such areas as fall within the territorial jurisdiction of the Commonwealth of Australia.

5.2 Part 2 - Offshore

Part 2 of this award applies to the employment of persons in or in connection with diving in the provision of underwater services in or in connection with offshore exploration and development diving as defined in clause 12, Definitions.

5.3 Part 3 - Inshore

Part 3 of this award applies to the employment of persons in or in connection with diving in the provision of underwater services other than those covered by Part 2.

6. RELATIONSHIP TO OTHER AWARDS

This award shall supersede The Seamen's Union of Australia, Maritime Industry, Professional Divers' Award 1992 but no right, obligation or liability accrued or incurred under such award in relation to allowable award matters shall be affected by such supersession.

7. ENTERPRISE FLEXIBILITY PROVISIONS

(See ss.113A and 113B of the Act)

Where an employer or employees wish to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs the following process shall apply:

- 7.1** A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.
- 7.2** For the purpose of the consultative process the employees may nominate the Union or another to represent them.
- 7.3** Where agreement is reached an application shall be made to the Commission.

8. INDEX OF FACILITATIVE PROVISIONS

8.1 A facilitative provision is one which provides that the standard approach in an award provision may be departed from by agreement between an individual employer and the Union and/or an employee, or the majority of employees, in the enterprise or workplace concerned.

8.2 Facilitative provisions in this award are contained in the following clauses:

Subject matter	Clause number
Annual leave	22.3
Annual leave	36.4
Hours of work	33.3
Meal breaks	35
Public holidays	38.2

9. DISPUTES SETTLEMENT PROCEDURE

In the event of a dispute arising in the workplace the procedure to be followed to resolved the matter will be as follows:

- 9.1** The employee/s and their immediate supervisor will meet to confer on the matter.
- 9.2** If the matter cannot be mutually resolved then the employee may request further discussion with the supervisor and the union representative or another employee representative, or if necessary, with more senior management and union representative or another employee representative.
- 9.3** If the matter still remains unresolved then it should be referred to the appropriate full-time official of the union or another employee representaive and company representative.
- 9.4** If any matter remains unresolved despite the efforts of the parties to achieve a resolution through consultative processes, then the assistance of the Australian Industrial Relations Commission shall be sought.

10. POSTING OF AWARD

A copy of this award, all amendments and appendices thereto and all locally applicable diving safety regulations shall be exhibited or made available by the employer at the place of work.

11. HIGHER DUTIES

- 11.1** Where employees perform the duties of a higher paid classification for a day or part thereof they shall be paid at the higher rate for that day and an equivalent day in their off duty period.
- 11.2** For the purposes of this clause a higher paid classification shall mean a classification which with salary and allowances is a higher paid classification than the employee's current classification.

PART II - OFFSHORE

12. DEFINITIONS

12.1 Atmospheric Diving Systems (ADS) will mean a manned diving system such as OMB, ARMS, MOB, JIM, WASP and similar systems which allow an operator to work underwater without being subjected to greater than atmospheric pressure.

12.2 Day:

12.2.1 Permanent employees - shall mean midnight to midnight.

12.2.2 Casual employees who work a full rostered on-duty period as defined in clause 13.3, shall mean midnight to midnight.

12.2.3 Casual employees who work other than a full rostered on-duty period as defined in clause 13.3 means each period of 24 hours or part thereof from the time of departure from the designated point of embarkation to the work site until the time of arrival back at the designated point of embarkation. Where an employee is working in Bass Strait and leaves and arrives on the same scheduled helicopter flight on consecutive or subsequent calendar days they will be considered to have been at work for one 24 hour period for each intervening calendar day.

12.3 Designated Assembly Point means the point from which the employer provides transport to the designated point of embarkation.

12.4 Designated Point of Embarkation means the point from which transport to the offshore location is provided.

12.5 Diver means an employee trained and experienced in diving techniques, in underwater breathing, in the use of equipment used in diving operations, in the administration of first-aid, and the routine maintenance of diving systems.

12.6 Diver's Attendant means an employee who has adequate knowledge of underwater work, the signals and communication devices used in diving operations, decompression procedures and equipment used in diving operations. The diver's attendant shall carry out the functions of attending a diver, including assisting the diver to dress and undress, handling hoses and/or lifelines and such other duties as may be assigned by the diving supervisor but shall not be required to perform underwater services.

12.7 Diving Superintendent means an employee placed in charge of a 24 hour diving operation to co-ordinate the diving work and to relieve diving supervisors engaged in that operation where and when necessary.

- 12.8 Diving Supervisor** means a diver experienced in diving and diving techniques appointed by the employer in writing to supervise diving operations, to instruct other divers and to be responsible for safe diving practices. The diving supervisor will also be competent to supervise all classes of hydrocarbon exploration and development diving applicable to and appropriate to the particular operation which may include using helium/oxygen or similar mixtures, using submarine observation chambers and operating from submarine working chambers. In addition, the diving supervisor is responsible to the employer for other on-site supervisory functions relating to matters within the scope of this award, including liaison with other companies, supervision of employees, keeping of appropriate records and reports ensuring that all equipment is kept and properly maintained to comply with all rules and regulations and that all expendable items are maintained at an acceptable stock level.
- 12.9 Hyperbaric Welder** means an employee who has been coded for a particular hyperbaric welding task and who is appointed to perform work in such capacity by the employer.
- 12.10 Life Support Technician** means an employee who will, under the supervision of a diving supervisor, control and monitor all the systems and functions which relate to the life support, safety and health of any person inside hyperbaric chambers used in saturation diving.
- 12.11 Offshore Exploration and Development Diving** means and include all diving from oil drilling rigs, hydrocarbons exploration vessels or platforms and diving in or in connection with the construction and maintenance of platforms and associated submarine pipelines.
- 12.12 Saturation Techniques** means procedures in accordance with which a diver is continuously subjected to an ambient pressure greater than atmospheric pressure so that the body tissues and blood become saturated with the inert element of the breathing mixture.
- 12.13 Senior Operator (OMB Operations)** means an employee appointed as such to operate an observation manipulator bell as "OMB", "ARMS" or "MOB".
- 12.14 Systems Maintenance Technician** means an employee engaged specifically to perform maintenance and repair tasks on diving and ancillary equipment. Such an employee shall typically have a relevant trade qualification and be familiar with diving operations.
- 12.15 Underwater Inspector** means an employee engaged in or in connection with the inspection of underwater structures.
- 12.16 Short Term Project** will be a continuous project not exceeding 56 days.

13. CONTRACT OF EMPLOYMENT

13.1 General employment

13.1.1 Except as provided in 13.3 employment for the first four weeks shall be on a weekly basis and thereafter shall be on a four weekly basis.

13.1.2 An employee shall perform such work as the employer shall, from time to time, reasonably require.

13.2 Termination of employment

Notice may be given at any time but the day on which the notice is given shall not count as part of the notice.

13.2.1 Notice of termination by employer

13.2.1(a) In order to terminate the employment of a full-time or regular part-time employee the employer shall give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

13.2.1(b) In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

13.2.1(c) Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

13.2.1(d) In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.

13.2.1(e) The period of notice in this clause, shall not apply in the case of dismissal for conduct that justifies instant dismissal including neglect of duty or misconduct and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.

13.2.1(f) An employer may extend a four week notice period by up to fourteen additional days during which time an employee may resign at any time without penalty. After the expiration of fourteen days of such extended notice period the employer must issue an additional four weeks' notice commencing from the time of the completion of the original four weeks' notice period.

13.2.2 Notice of termination by an employee

13.2.2(a) The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

13.2.2(b) If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.

13.2.2(c) Where employees have given notice or been given notice as aforesaid, they shall continue in their employment until the date of the expiration of such notice. Any employee who, having given notice or having been given notice as aforesaid without reasonable excuse (proof of which shall be on them), absent themselves from work during such period shall not be entitled to payment for work done by them within that period.

13.3 Casual employees

13.3.1 A casual employee is one engaged and paid as such, provided that a person shall only be hired as a casual to supplement the normal diving team or to replace a regular crew member who is absent.

13.3.2 An employee employed as a casual as specified in 13.3.1 shall not subsequently be employed by that employer until the expiration of a period equivalent to the preceding period of duty. This paragraph shall not apply where the employee must be employed prior to the expiration of that equivalent period because no other suitable employee is available for employment.

13.3.3 Casual employees shall be paid in accordance with the provisions of 13.3 and shall receive all appropriate allowances as prescribed by this award.

13.3.3 Short term projects

13.3.3(a) A casual employee is one engaged and paid as such, provided that a person shall only be employed in a casual capacity for a continuous project period not exceeding 56 days after which such employee will be deemed as permanent.

- 13.3.3(b)** During a short term project, no employee will be required to be kept offshore for a period exceeding 28 days or any other lesser period as agreed between the parties.
- 13.3.3(c)** An employee employed as a casual as specified in 13.3.1 who reports for duty but cannot be transported offshore shall receive payment for that day provided that the employer is entitled to gainfully employ that employee onshore.
- 13.3.3(d)** A casual employee shall be paid on a daily basis at the rate of 227.5% of the daily rate.

14. STAND DOWN

14.1 An employer may deduct payment for any day an employee cannot be usefully employed because of any strike subject to the following conditions:

14.1.1 When an employer proposes to exercise the right conferred by this subclause, they shall notify the employee. During the period such notification remains in force, the employee shall be deemed to be stood down for the purpose of this subclause.

14.1.2 An employee who is stood down under this subclause shall be treated for all purposes (other than payment of wages) as having continuity of service and employment notwithstanding such standing down.

14.1.3 Employees who are stood down under this subclause may at any time during the period they are stood down terminate their employment without notice and shall be entitled to receive from the employer as soon as practicable any monies due to them at the time of termination. The day on which the employee exercises the right of termination without notice shall be the day on which the employment is terminated.

14.1.4 Employees whose employment is terminated under 14.1.3 shall for all purposes (other than payment in lieu of notice) be treated as if their employment has been terminated without default of the employee.

14.1.5 An employee who is stood down under this subclause shall be at liberty to take other employment.

14.1.6 Employees stood down under the provisions of 14.1 for a period of more than five working days, who have exercised the right to take other employment shall upon receipt of written notification of a resumption of work, recommence work as soon as is reasonably practicable provided that within forty-eight hours of receipt of such notification they advise the employer of their intention to resume work.

14.1.7 Employees whom the employer proposes to stand down under the provisions of 14.1 may elect to take, for the period of the stand down only, any annual leave, accrued off duty leave or their paid leave to which they are entitled or which is accruing to them and upon such election being exercised the employee's annual leave, accrued off duty leave or other paid leave to which they are entitled or which is accruing shall be reduced accordingly.

14.1.8 If so requested by an employee prior to being stood down in accordance with these provisions, payment for time worked up to and including the day upon which such stand down occurs, shall be made upon the day of such stand down or as soon as is reasonably practical thereafter.

15. WAGE RATES

[15 substituted by [PR942338](#) ppc 28Nov03]

15.1 Employees shall be paid the amounts set out hereunder per calendar month according to the class of work:

Classification	Minimum Rate per Calendar Month	Aggregate Salary Factor	Total Rate per Calendar Month
Diving Superintendent	2993.25	\$3,498.75	\$6,492
Diving Supervisor	2752.97	\$3,196.40	\$5,949
Supervisor (ADS Operations)	2752.97	\$3,196.40	\$5,949
Hyperbaric Welder	2629.03	\$3,040.30	\$5,669
Life Support Technician	2429.05	\$2,767.95	\$5,197
Senior Operator (OMB Operations)	2429.05	\$2,767.95	\$5,197
Systems Maintenance Technician	2221.92	\$2,507.10	\$4,729
Diver	2015.87	\$2,247.45	\$4,263
Operator (ADS Operations)	2015.87	\$2,247.45	\$4,263
Diver's Attendant	1642.55	\$1,776.45	\$3,419

15.1.1 The Diver Classification is the Key Classification for this Award and the aggregate salary factor includes payment for the various rosters that may be worked, overtime, "the follow the job" nature of the industry and penalties and conditions of employment applicable to work performed under this part of the Award.

15.2 Arbitrated safety net adjustment

The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review – 1998 decision*. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

16. ALLOWANCES

16.1 Disability allowance

Employees will receive an additional payment of \$45.14 for each on-duty day (or in the case of casual employees \$53.60 per on-duty day) on a support vessel whether dynamically positioned or anchor moored in recognition of all disabilities and work requirements associated with living and working from such a vessel. The amounts shown reflect payment for the on-duty and off-duty period.

16.2 Diving allowances

16.2.1 Diving other than ADS Operations

16.2.1(a) In addition to the wage rates set out in 15.1, a diver shall be paid a diving allowance of \$2.64 per metre or \$0.80 per foot or equivalent pressure with a minimum allowance calculated as fifty (50) times the diving allowance per foot except where a diver is engaged in a dive using saturation techniques in which case the minimum allowance shall be calculated as two hundred and fifty (250) times the diving allowance per foot.

16.2.1(b) Such allowance shall be payable once in respect of the greatest depth or equivalent pressure incurred in each period worked. For the purposes of this subclause a period worked shall begin from the time the diver enters the water or is subject to greater than atmospheric pressure and shall end 12 hours later. Further periods worked shall begin each 12 hours if at the end of a period worked or a further period worked, a diver is still subject to greater than atmospheric pressure.

16.2.2 ADS Operations

In addition to the wage rates set out in 15.1, a Senior operator (OMB Operations) and Operators (ADS Operations) shall be paid a diving allowance of \$1.32 per metre or \$0.40 with a minimum allowance calculated as two hundred and fifty (250) times the diving allowance per foot. Such allowance shall be payable only once in respect of dives commenced within a twelve hour period.

16.2.3 Practice or training dives

The diving allowances referred to above shall not be paid to persons performing practice or training dives or to an Operator (ADS Operations) during the first twelve month period of training. Underwater services shall not be performed for the employer during practice or training dives.

16.2.4 Diving superintendents and diving supervisors

16.2.4(a) Diving superintendents, diving supervisors and supervisors (ADS Operations) shall receive twenty per cent and life support technicians shall receive fifteen per cent of the average diving allowance paid to divers or operators (ADS Operations) under their control. Average diving allowance will be calculated daily by dividing the total diving allowance earned in each day or part thereof by divers or operators (ADS Operations) under the control of a Diving superintendent, Diving supervisor or Supervisor (ADS Operations) by the number of divers or operators (ADS Operations) who earned diving allowance in that day.

16.2.4(b) Surface oriented dives made in conjunction with saturation diving operations shall be calculated separately for the purpose of calculating the average diving allowance.

16.3 Living away from home allowance

An allowance of \$31.50 per day shall be paid to each employee for each day or part thereof of their duty period offshore or in circumstances where employees would normally be working offshore and are temporarily accommodated onshore away from their home. With the exception of annual leave the allowance shall not be payable during periods of leave or authorised absences nor during periods in which the employee is specifically engaged on shore based duties including equipment mobilisation or demobilisation where the employee is able to live at home.

16.4 Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography shall, in addition to the salary rate applicable to their classification, be paid an allowance for each day or part thereof on which they are engaged in such duties. The allowance shall be \$39.73 per day.

16.5 Hyperbaric welding allowance

[16.5 substituted by [PR942338](#) ppc 28Nov03]

16.5.1 The hyperbaric welding rate specified in 15.1 shall apply from the date an employee is required to carry out duties related to the welding to be performed. the payment shall cease when the employee is no longer required by the employer to carry out tasks related to the welding.

16.5.2 A hyperbaric welder shall be entitled to a payment of \$3.28 per linear millimetre for a successfully completed weld. For the purpose of this clause, "successfully completed" means a weld which has been accepted by the client without the necessity for repair.

- 16.5.3** Provided that in lieu of 16.5.2 a hyperbaric welder shall be entitled to payment of \$2.20 per linear millimetre for a weld which requires repair prior to being accepted by the client.
- 16.5.4** The payments prescribed in 16.5.2 and 16.5.3 shall apply only to members of the nominated hyperbaric welding team who have been coded for that particular hyperbaric welding task.

16.6 Irregular start and finish for platform divers in Bass Strait only (Print H5264).

When an employee is required to work outside of his nominated hours he will be paid an allowance of 15% of the daily rate for each day he is required to work in this manner. This allowance will not apply to regular rostered shift work from a vessel, drillship or barge.

16.7 Loss Of Personal Effects Allowance

An employee will be reimbursed up to \$1500.00 for the loss of personal effects normally required while offshore, which are lost due to fire, explosion, collision, foundering or collapse of a fixed platform, vessel or work barge. Provided that no payment will be made where the employee's loss is made good by any insurance policy or other claim on the employer or any third party.

16.8 Transportation And Accommodation Allowances

- 16.8.1** At the beginning and end of each on-duty period the employer shall provide transport between the designated assembly point and the work site. Employees are required to present themselves at the designated point of embarkation by use of the transport provided by the employer or otherwise at their own expense. If the transport provided is in the form of a hired vehicle the employee shall be responsible for the care of the vehicle and if an accident occurs while the employee is in charge of the vehicle and is proven to be under the influence of illegal drugs or alcohol, the employer shall have the right to recover from the employee any cost incurred by the employer resulting from such accident.
- 16.8.2** During the period of duty, employees who cannot reasonably return to their usual place of abode shall be reimbursed the cost of reasonable accommodation and meals. Where such accommodation and meals are provided by the employer the provisions of this clause do not apply.
- 16.8.3** The employer shall notify the employees of the designated assembly point and point of embarkation for each job.

16.9 Clothing And Equipment Allowances

- 16.9.1** Employees shall be reimbursed for the purchase of clothing and equipment required for the performance of duties. The provision of this clause do not apply if the employer provides such clothing and equipment.

16.9.2 Where a permanent employee is required to supply and maintain his/her own wetsuit and required to supply approved safety footwear she or he will be paid an allowance of \$79.50 per calendar month.

16.9.3 In the case of a casual employee, the allowance will be \$6.40 per day.

16.10 Medical examination allowance

16.10.1 Where the employer requests that a prospective employee undertake a pre-employment medical examination, the employee shall be reimbursed for the costs of attending such examination.

16.10.2 Where Commonwealth or State and Territory Legislation require that employees bound by this Award must submit to medical examination, then upon employees complying with such Act or Regulation, the employer will reimburse the employee for all costs associated with such examination.

16.11 Insurance reimbursement allowance

Where the employee elects to obtain insurance cover against death from any cause with a sum insured of \$110,000 to apply during the period of the employees employment, then upon presentation of verifiable evidence of the purchase of such insurance policy, the employer shall reimburse the employee for the cost of the policy. The provision of this clause do not apply if the employer provides such insurance coverage directly.

17. SUPERANNUATION

17.1 The employer shall make a monthly contribution to the Professional Divers' Superannuation Fund in respect of each employee other than casual employees, including employees who are absent in accordance with the provisions of 18, Accident pay, 22, Annual leave, 23, Sick leave, 24, Bereavement leave and 25, Jury Service.

17.1.1 Such contribution shall be calculated at 10% of the employee's gross wages for the respective category as prescribed by 15.1, Wage Rates.

17.2 The employer shall make a monthly contribution to the Professional Divers' Superannuation Fund in respect to casual employees. Such contribution shall be calculated at 10% of the employee's daily wage for the respective category as prescribed by 15.1, Wage Rates.

17.3 Provided that the annual superannuation contributions made by the employer shall not exceed the approved limit laid down by the Insurance and Superannuation Commission.

18. ACCIDENT PAY

- 18.1** An employer shall pay an employee accident pay where the employee received an injury for which weekly payments or compensation are payable by or on behalf of the employer pursuant to the provisions of the appropriate Workers' Compensation Act or Accident Compensation Act.
- 18.2** "**Accident Pay**" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the said appropriate Workers' Compensation Act, or Accident Compensation Act and the employee's appropriate ordinary award rate, or where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.
- 18.3** An employer shall pay, or cause to be paid, accident pay during the incapacity of the employee within the meaning of the said acts until such incapacity ceases, until payments of compensation cease, or until the expiration of 52 weeks from the date of injury, whichever event shall first occur.
- 18.4** The liability of the employer to pay accident pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable under the said appropriate Acts, and the termination of the employees employment for any reason during the period of any incapacity shall in no way affect the liability of the employer to pay accident pay as provided in this clause.
- 18.5** In the event that the employee receives a lump sum in redemption of weekly payments under the said Acts, the liability of the employer to pay accident pay as herein provided shall cease from the date of such redemption.

19. PAYMENT OF WAGES

19.1 Wages shall be paid to employees on a regular basis, either monthly, twice monthly, four weekly, fortnightly or weekly.

19.2 For the purpose of converting the monthly rate to a daily rate the following will apply:

19.2.1 Annual rate shall be 12 times the monthly rate.

19.2.2 Daily rate shall mean $1/365$ of the annual rate.

20. HOURS OF WORK

With the exception of employees engaged in operations rendering them subject to greater than atmospheric pressure, the average daily hours of work shall be no greater than twelve hours. Starting and finishing times shall be in accordance with a nominated regularly recurrent roster schedule.

21. PERIODS OF DUTY

21.1 Leave accrual

For each on-duty day worked employees other than casual employees shall receive one paid off-duty leave day.

21.2 Rosters

The employer shall establish a regularly recurring roster of equal on-duty and off-duty periods for each work site. The on-duty and off-duty periods shall each be of 14 days' duration, provided that other equal periods may be worked by agreement between the parties.

21.3 On-duty period

The on-duty period for employees, other than casual employees shall commence on the day of arrival at the designated point of embarkation to the work site.

21.4 Off-duty period

The off-duty period for employees, other than casual employees shall commence on the day of departure from the work site. Provided that if the employee is held over beyond midnight on his crew change day and/or subsequent days, he shall be paid one days pay at the base rate but he shall not accrue a subsequent leave day.

21.5 Not attending for duty

Employees not attending for duty in a rostered on-duty period other than as provided for elsewhere in this clause shall not receive payment nor accrue off-duty leave days in respect of such period.

21.6 Authorised paid leave

Employees who are absent during a rostered on-duty period for reasons provided for in clauses 18, Accident pay, 23, Sick leave, 24 Bereavement leave and 25, Jury service shall be paid as if on-duty for the period of such absence.

21.7 Authorised unpaid leave

At the request of an employee the employer may grant authorised unpaid leave to that employee. The employee shall not receive payment nor accrue or use paid off-duty leave days in respect of such period of absence. The granting of authorised unpaid leave shall be at the sole discretion of the employer.

21.8 Roster changes by the employer

Where a roster is changed by the employer and the commencement of an employee's on-duty period is advanced, the employee shall be considered to be on-duty from the day of arrival at the designated point of embarkation.

21.9 Roster changes by the employee

Where a roster is changed at the request of an employee the employee shall be either on duty and accruing off-duty leave days or off-duty and using off-duty leave days as provided in 21.3 and 21.4.

21.10 Returning to work early

Where an employee commences duty prior to the commencement of the employee's rostered on-duty period the employee shall be considered to be on-duty from the day of arrival at the designated point of embarkation.

21.11 Prevented from commencing an on-duty period

Where an employee reports for duty at a designated assembly point but cannot be transported to the offshore work site due to weather conditions, insufficient work or other circumstances beyond the employer's control, the period of such delay will be regarded as an on-duty period provided that the employer may gainfully employ the employee onshore.

The provisions of this subclause do not affect the right of an employer to stand down an employee because of any strike pursuant to the provisions of 14.

21.12 Prevented from remaining on-duty

Where during an on-duty period an employee cannot remain at the offshore work or other circumstances beyond the employer's control, such days shall be considered to be on-duty days provided that the employer may gainfully employ the employee onshore.

The provisions of this subclause do not affect the right of an employer to stand down an employee because of any strike pursuant to the provisions of 14.

21.13 Prevented from commencing off-duty period

Where due to weather conditions or other circumstances an employee is delayed offshore and prevented from commencing a rostered off-duty period the employee shall be on-duty and accruing off-duty leave days until the employee actually commences an off-duty period.

21.14 Imbalance of off-duty leave days owed and actually taken

Pursuant to the provisions of this clause an employee may accrue more off-duty leave days than are taken or take more off-duty leave days than have been accrued. Where the employee accrues more off-duty leave days than are taken the balance shall be recorded and taken at another time. Where the employee takes more off-duty leave days than are accrued they shall be deducted from any balance of off-duty days yet to be taken. Where that results in a negative balance of off-duty leave days that number of days will be subtracted from the employee's pay for that month. A positive balance of off-duty days owed to the employee on termination shall be paid to the employee at that time.

21.15 Work on first day of off-duty period

To allow a smooth change over of on-duty and off-duty crews employees will normally be required to work for some period of the first day of their off-duty period on the understanding that they will on average not work a corresponding period on the first day of their on-duty period.

22. ANNUAL LEAVE

- 22.1** A period of 28 consecutive days' leave including non-working days shall be allowed to an employee after 12 months' continuous service. Such 28 days' leave shall be exclusive of the off-duty period associated with the preceding duty period.
- 22.2** Employees to whom 22.1 applies shall, before going on leave, be paid the wages and living away from home allowance they would otherwise have been paid had they not been absent.
- 22.3** Annual leave shall be given and taken in a continuous period, or if the employer and employee so agrees, in two separate periods and shall be given and taken within six months of falling due.
- 22.4** If in the first qualifying twelve monthly period with an employer employees lawfully leave the employment of the employer or their employment is terminated by the employer through no fault of the employees, they shall, in respect of the period worked, be paid the cash equivalent of annual leave in the same proportion which the period worked bears to a year. Such payment shall be calculated in the same manner as the payment 21.2. Provided that the Living Away From Home Allowance shall not be included.
- 22.5** If after the first qualifying 12 monthly period with an employer employees leave their employment or their employment is terminated by the employer for any reason whatsoever during any qualifying period for annual leave, they shall, in respect of the period worked, be paid the cash equivalent of annual leave in the same proportion which the period worked bears to a year. Such payment shall be calculated in the same manner as the payment prescribed in 22.2. Provided that the Living Away From Home Allowance shall not be included for portions of less than a complete period of 12 months' continuous service.

23. SICK LEAVE

- 23.1** After four weeks' service employees, other than casual employees, who are absent from work on account of personal illness or on account of injury by accident for which they are not entitled to workers or accident compensation, shall, on production of evidence of their illness to their employer within 48 hours of the commencement of such absence or injury, be entitled to leave of absence on the prescribed rate of pay for a period of 14 rostered on-duty days.
- 23.2** Provided that where employees with more than four weeks' service with an employer in the previous 12 months are terminated by the employer and are subsequently re-engaged, other than as a casual employee by that employer within a period of three months, they shall immediately upon re-engagement be entitled to such sick leave as was standing to their credit prior to termination.
- 23.2.1** Provided further that employees shall not be entitled to accrue more than the prescribed amount of sick leave for their classification in a 12 month period from the date of original entitlement of such sick leave.
- 23.3** Such sick leave shall accumulate from year to year so that any balance of the period specified in 23.1 which has not been allowed to an employee by the employer as paid sick leave may be claimed by the employee, and subject to the conditions herein prescribed, shall be allowed by the employer in any subsequent year without diminution of the sick leave prescribed in respect of that year.
- 23.3.1** Provided that no employee shall be entitled to receive, and no employer shall be bound to make payment for more than eight weeks' absence from work through illness in any one year.
- 23.4** In the event of employees who are required to be subjected to greater than atmospheric pressure suffering any serious illness or injury resulting in inability to perform any work in circumstances in which workers' or accident compensation was not payable, they shall be given an extra 14 on-duty days sick leave with the employer having the right to have them medically examined and approved for sick leave by a doctor nominated by the employer. The provision of 28 on-duty days sick leave is to cover a situation of disabling illness or injury in one year. Disabling illness or injury shall mean an illness or injury which prevents an employee from diving or being subject to greater than atmospheric pressure but not from performing any other activity under the provisions of this award.
- 23.5** The amount of sick leave available to an employee will be reduced by one day for each rostered on-duty day not attended due to illness covered by this clause.

24. BEREAVEMENT LEAVE

- 24.1** An employee shall be entitled to seven on-duty days' bereavement leave without loss of pay on each occasion and on production of satisfactory evidence of the death of the employee's spouse, father, mother, brother, sister, child or parents-in-law. For the purpose of this clause, the word "spouse" shall include a de facto spouse.
- 24.2** Employees who are absent on such leave shall be paid their usual wages and allowances payable under the provisions of this award as if at work with the exception of Diving Allowance and Living Away From Home Allowance and shall accrue all other benefits and entitlements as if at work.

25. JURY SERVICE

- 25.1** Employees who are called for jury service and request to be excused from such jury service shall, if they are still required to attend for jury service, be paid their usual wages and allowances payable under the provisions of this award, as if at work with the exception of diving, diving clothing and protective clothing and Living Away from Home Allowance and equipment allowances and shall accrue all other benefits and entitlements as if at work.
- 25.2** Employees shall pay the employer all remuneration that they may receive in respect of jury service with the exception of transportation and meal allowances.

PART III - INSHORE

26. DEFINITIONS

[26 substituted by [PR935235](#) ppc 22Jul03]

- 26.1 Casual employee** shall mean an employee engaged in circumstances where the duration of the employment is less than four weeks.
- 26.2 Diver** shall mean an employee trained and certified in accordance with AS 2815 Part 1-3 and experienced in the use of SCUBA and/or SSBA equipment, the physics and physiology of diving, underwater communication systems, use, inspection and maintenance of compressed air supplies, operation and maintenance of underwater tools, preparation and operation of compression chambers (Parts 1 & 2 under supervision), the performance of underwater work, first aid and the relevant legislation.
- 26.3 Diver's Attendant** shall mean an employee who has adequate knowledge of underwater work, the signals and communication devices used in diving operations, decompression procedures and equipment used in diving operations. The diver's attendant shall carry out the functions of attending a diver, including assisting the diver to dress and undress, handling hoses and/or lifelines and such other duties as may be assigned by the diving supervisor but shall not be required to perform underwater services.
- 26.4 Diving Supervisor** shall mean an employee appointed in writing by the employer to supervise diving operations, to instruct other divers in diving techniques, to be responsible for safe diving practices and shall be competent to carry out all classes of diving. An employee shall have worked as a diver for a period of not less than six months before being designated as a diving supervisor.
- 26.5 Hyperbaric Welder** shall mean an employee who is a trained and certified diver and is a qualified welder appointed to perform work in such capacity by the employer.

27. CONTRACT OF EMPLOYMENT

27.1 Weekly employment

27.1.1 All employees except casual employees shall be employed by the week. Provided that where employment is of less than four weeks duration employees shall be paid casual rates.

27.2 Termination of employment

27.2.1 Notice of termination by employer

27.2.1(a) In order to terminate the employment of a full-time or regular part-time employee the employer shall give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

27.2.1(b) In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

27.2.1(c) Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

27.2.1(d) In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.

27.2.1(e) The period of notice in this clause, shall not apply in the case of dismissal for conduct that justifies instant dismissal including neglect of duty or misconduct and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.

27.2.2 Notice of termination by an employee

27.2.2(a) The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

27.2.2(b) If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.

27.3 Casual employment

27.3.1 Casual employment shall be terminated by four hours' notice on either side, or by the payment or forfeiture of four hours' wages as the case may be.

27.3.2 Where casual employees are required to attend for work at the usual starting time and are not required to start work they shall be paid four hours pay plus fares and travelling time in accordance with 30.6.

28. STAND DOWN

28.1 An employer may deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

28.1.1 Provided that in regard to a breakdown in machinery, or a stoppage of work caused by inclement weather conditions, no deductions shall be made except in respect of days which occur after such breakdown or stoppage has continued for more than five consecutive working days, inclusive of the day of the breakdown or stoppage caused by inclement weather conditions.

28.1.2 Where employees have given notice or been given notice as aforesaid they shall continue in their employment until the date of the expiration of such notice.

28.1.3 Where weekly employees attend for work at the usual starting time and are told for the first time that they are stood down in accordance with this clause they shall be entitled to be paid fares and travelling time in accordance with 30.6.

29. WAGE RATES

[29 substituted by [PR935235](#) ppc 22Jul03; varied by [PR966965](#) ppc 19Dec05]

29.1 All employees must be paid the minimum weekly wage according to their classification as set out in the following table:

Classification	Rate of pay per week
	\$
Diving supervisor	999.80
Hyperbaric welder	758.80
Diver	722.20
Diver's attendant	570.20

29.2 Arbitrated safety net adjustment

The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review—Wages June 2005* decision [PR002005]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

29.3 Casual rate of pay

A casual employee shall be paid an hourly rate with a minimum payment of eight hours. The rate is 1/33 of the weekly rate plus twenty percent.

30. ALLOWANCES

30.1 Diving allowance

[30.1.1 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

- 30.1.1** In addition to the wage rates set out in 29.1 a diver shall be paid a diving allowance of \$0.97 per foot or \$3.20 per metre of water or equivalent pressure. Such allowance shall be payable once in respect of the greatest depth or equivalent pressure incurred each day.
- 30.1.2** Provided that the diving allowance specified herein shall only apply to dives made in excess of 50 feet or fifteen metres of water or equivalent pressure or when decompression is necessary whichever shall occur first and shall be calculated from the surface to the maximum depth or equivalent pressure attained during the dive.
- 30.1.3** The diving allowance referred to above shall not be paid to persons performing practice or training dives. Underwater services shall not be performed for the employer during practice or training dives.
- 30.1.4** Diving supervisors shall receive twenty percent of the average diving allowance paid to divers under their control. Average diving allowance will be calculated daily by dividing the total diving allowance earned by divers whilst under the control of a diving supervisor by the number of divers who earned diving allowance on that day.

30.2 Non-destructive testing allowance

[30.2 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography shall, in addition to the salary rate applicable to their classification, be paid an allowance for each day or part thereof on which they are engaged in such duties. The allowance shall be \$48.44 per day.

30.3 Hyperbaric welding allowance

[30.3 varied by [PR935235](#) ppc 22Jul03]

- 30.3.1** The hyperbaric welding rate specified in 30.3.2 shall apply from the date an employee is required to carry out duties related to the welding to be performed. The payment shall cease when the employee is no longer required by the employer to carry out tasks related to the welding.

[30.3.2 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

- 30.3.2** A hyperbaric welder shall be entitled to a payment of \$3.61 per linear millimetre for a successfully completed weld. For the purpose of this clause, "successfully completed" means a weld which has been accepted by the client without the necessity for repair.

[30.3.3 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

- 30.3.3** Provided that in lieu of 30.3.2 a hyperbaric welder shall be entitled to payment of \$2.44 per linear millimetre for a weld which requires repair prior to being accepted by the client.
- 30.3.4** The payments prescribed in 30.3.2 and 30.3.3 shall apply only to members of the nominated hyperbaric welding team who have been coded for the particular hyperbaric welding task.

30.4 Annual medical exam allowance

Employees who are subjected to greater than atmospheric pressure shall be reimbursed the cost of an annual medical examination which shall include but not be limited to the requirement set out in Appendix A of the Standards Association of Australia Underwater Air Breathing Operations Standard AS2299. The provisions of this clause do not apply where the employer provides for the service.

30.5 Meal allowance

[30.5 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

Employees who are required to work overtime for more than two hours on any day after the usual finishing time shall be entitled to an allowance of \$6.58 meal money unless they had been notified the previous day that their services would be required or a hot meal is provided by the employer. Provided that where employees are notified that they will be required to work overtime the following day and such order is cancelled after they have left work on the day on which they were notified they shall be paid the sum of \$6.58 meal money.

30.6 Fares And Travelling Time Allowance

[30.6.1 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

- 30.6.1** Employees who commence and finish work within a 50 kilometre radius of the General Post Office in the city or town in which the employer's registered business address is situated shall receive a fare allowance of \$10.60 per day.
- 30.6.2** Where employees commence and finish work beyond the 50 kilometre radius referred to in 30.6.1 they shall be reimbursed for the actual fares hereof incurred and all time spent travelling beyond this radius shall be paid at ordinary rates.

30.7 Distant Work allowance

30.7.1 For the purpose of this clause distant work is that in respect of which the distances or the travelling facilities to and from such places of work make it reasonably necessary that employees shall live and sleep at some place other than their usual place of residence at the time of commencing such work. Provided that if employees whilst employed on distant work change their usual place of residence such new place of residence or any further change thereof (if made whilst employed on distant work) shall be their usual place of residence for determination of whether the work is distant work within the meaning of this clause.

30.7.2 Employees engaged on distant work shall be conveyed with equipment to and from work at their employer's expense. Such conveyance shall be made only once unless the employee is recalled and sent again to the place of work, when it shall be made each time that this happens. Provided that return fares and travelling time need not be paid to employees who:

30.7.2(a) Leave the employment of their own free will before the completion of the job or before being three months in such employment, whichever first happens, or is discharged for incompetence within one week of engagement.

30.7.2(b) Is discharged for misconduct.

[30.7.3 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

30.7.3 The rate of pay for time occupied in travelling to and from distant work shall be ordinary rates, except on Sundays and holidays when it shall be time and one-half. Employees shall also be paid an amount of \$5.11 to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.

30.7.4 The maximum travelling time to be paid for shall be twelve hours out of every twenty-four hours, or when sleeping berth is provided by the employer for all night travel, eight hours out of every twenty-four hours.

[30.7.5 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

30.7.5 On distant work employees may be paid, by mutual agreement with the employer, an allowance of \$267.63 week or such greater amount as may be agreed upon, in return for which employees shall be responsible for securing their own accommodation and meals. In the case of broken parts of the week occurring at the beginning or ending of the employment on a distant job the allowance shall be \$38.28 per day or 1/7 of any other weekly amount agreed upon. The provisions of this clause do not apply if the employer provides reasonable board and lodging.

[30.7.6 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

30.7.6 Employees who consent to use their own vehicle in the course of their employment shall be paid an allowance of \$0.56 per kilometre. This allowance is for the use of the vehicle by the employee for transporting the employee and the employee's personal diving equipment.

30.8 Diving Clothing And Equipment Allowance

[30.8 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

Employees who supply their own wet suits and personal diving equipment including weightbelt and diving knife shall be paid, in addition to the ordinary rate, an allowance of \$6.83 per day on each day on which the equipment is used.

30.9 Protective Clothing And Equipment Allowance

30.9.1 Employees should be reimbursed for the cost of all industrial protective clothing and safety equipment other than that prescribed 30.8 which is required by the employer to be worn. This provision does not apply if the clothing and the equipment is supplied by the employer.

[30.9.2 varied by [PR935235](#) [PR966965](#); [PR975125](#) ppc 01Dec06]

30.9.2 Casual employees may, in lieu of provision of footwear, be paid an amount of \$2.44 per day of employment for the purchase of approved safety footwear. This allowance shall not be payable where safety footwear is not required to be worn.

31. PAYMENT OF WAGES

- 31.1** Wages shall be paid weekly and the employer shall not keep more than two days pay in hand. Employees kept waiting for their wages on pay day for more than fifteen minutes after the usual time for ceasing work shall be paid overtime rates after that fifteen minutes.
- 31.2** Upon termination of the employment, wages due to employees shall be paid to them on the day of such termination or forwarded to them by post on the next working day.

32. ACCIDENT PAY

- 32.1** An employer shall pay an employee accident pay where the employee received an injury for which weekly payments or compensation are payable by or on behalf of the employer pursuant to the provisions of the appropriate Workers' Compensation Act or Accident Compensation Act.
- 32.2** "**Accident Pay**" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the said appropriate Workers' Compensation Act or Accident Compensation Act and the employee's appropriate ordinary award rate, or where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.
- 32.3** An employer shall pay, or cause to be paid, accident pay during the incapacity of the employee within the meaning of the said Acts until such incapacity ceases, until payments of compensation cease, or until the expiration of 52 weeks from the date of injury, whichever event shall first occur.
- 32.4** The liability of the employer to pay accident pay in accordance with this clause shall arise at the expiration of a period of five days from the date of the injury or accident in respect of which compensation is payable under the said appropriate Acts, and the termination of the employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the employer to pay accident pay as provided in this clause.
- 32.5** In the event that the employee receives a lump sum in redemption of weekly payments under the said Acts, the liability of the employer to pay accident pay as herein provided shall cease from the date of such redemption.

33. HOURS OF WORK

- 33.1** The ordinary hours of work shall not exceed six hours and 36 minutes per day which may be worked between 6.00am and 6.00pm Monday to Friday.
- 33.2** Work undertaken prior to the spread of hours provided by 33.1 for which overtime rates are payable shall be deemed for the purposes to this clause to be part of the ordinary hours of work.
- 33.3** The spread of hours provided by 33.1 may be altered by up to one (1) hour by mutual agreement between the employer and employees.
- 33.4** Where employees are not employed on diving operations as such during the full six hours and 36 minutes in any one day, the employer shall have the right to use their services on other work for any time remaining.

34. OVERTIME

34.1 All time worked in excess of the hours prescribed by 33 shall be paid at the rate of time and one-half for the first two hours and double time thereafter and all time worked on a Saturday shall be paid for at time and one half for the first two hours and double time thereafter.

34.2 All time worked on a Sunday shall be paid for at double time.

34.3 Employees including casual employees who are called back to work after the usual finishing time shall be paid for a minimum of four hours' work at overtime rates.

35. MEAL BREAKS

Employees shall be entitled to a meal break of a duration and at a time fixed by mutual agreement provided that no employee shall work more than three hours without such a break.

36. ANNUAL LEAVE

- 36.1** A period of 28 consecutive days' leave, including non-working days, shall be allowed annually to an employee after twelve months' continuous service in any one or more of the occupations to which this part applies.
- 36.2** Subject to this subclause the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by 38 and if any such holidays fall within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.
- 36.3** Where a holiday falls as aforesaid and employees fail without reasonable cause (proof whereof shall be upon them) to attend for work at their ordinary starting time on the working day immediately following the last day of their period of annual leave, they shall not be entitled to be paid for any such holiday.
- 36.4** The annual leave shall be given and taken in a continuous period, or if the employee and the employer so agree, in two separate periods. It shall be given and taken within six months of falling due.
- 36.5** Employees to whom 36.1 applies shall, before going on leave, be paid the wages they would otherwise have been paid pursuant to 29 had they not been absent, plus an annual leave loading of 17.5 per cent of that amount.
- 36.6** If employees:
- 36.6.1** After one weeks' employment in their first qualifying twelve month period with an employer lawfully leave the employment of the employer or their employment is terminated by the employer through no fault of the employee; or
- 36.6.2** After twelve months continuous service with an employer leave their employment or their employment is terminated by the employer, they shall be paid pro rata to their period of service at the rates prescribed in 29.

37. SICK LEAVE

- 37.1** After four weeks' service employees, other than casual employees, who are absent from work on account of personal illness or on account of injury by accident for which they are not entitled to workers' or accident compensation shall, on production within 48 hours of the commencement of such absence of evidence of their illness or injury satisfactory to their employer, be entitled to leave of absence on the prescribed rate of pay for a period of ten working days.
- 37.1.1** Provided that where employees with more than four weeks service with an employer in the previous twelve months are terminated by the employer and are subsequently re-engaged, other than as a casual employee by that employer within a period of three months, they shall immediately upon re-engagement be entitled to such sick leave as was standing to their credit prior to termination.
- 37.1.2** Provided further that employees shall not be entitled to accrue more than the prescribed amount of sick leave for their classification in a twelve months period from the date of original entitlement of such sick leave.
- 37.2** Such sick leave shall accumulate from year to year so that any balance of the period specified in 37.1 which has not been allowed to an employee by the employer as paid sick leave may be claimed by the employee and, subject to the conditions herein prescribed, shall be allowed by the employer in any subsequent year without diminution of the sick leave prescribed in respect of that year.
- 37.2.1** Provided that no employee shall be entitled to receive, and no employer shall be bound to make payment for more than eight weeks' absence from work through illness in any one year.
- 37.3** In the event of employees who are required to be subjected to greater than atmospheric pressure suffering any serious illness or injury resulting in inability to perform any work in circumstances in which workers' or accident compensation was not payable, they shall be given an extra two weeks' sick leave with the employer having the right to have them medically examined and approved for sick leave by a doctor nominated by the employer. The provision of four weeks' sick leave is to cover a situation of disabling illness or injury in one year. Disabling illness or injury shall mean an illness or injury which prevents an employee from diving or being subject to greater than atmospheric pressure but not from performing any other activity under the provisions of this award.
- 37.4** Subject to the provisions of this subclause, the provisions of this clause apply to employees who suffer personal ill health or injury during the time when they are absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place in paid annual leave:
- 37.4.1** Application for replacement shall be made within seven days of resuming work and then only if employees were confined to their place of residence or a hospital as a result of their personal ill health or injury for a period of seven consecutive days or more and produce a certificate from a registered medical practitioner that they were so confined.

- 37.4.2** Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee is entitled at the commencement of annual leave and shall not be made with respect to fractions of a day.
- 37.4.3** Where paid sick leave has been granted by the employer in accordance with the provisions of this subclause, that portion of the annual leave equivalent to the paid sick leave will be replaced by the paid sick leave and the reinstated annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid in accordance with the provisions of 36.6.
- 37.4.4** Payment for replaced annual leave shall be at the wage rate applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in 36.5 shall be deemed to have been paid with respect to the replaced annual leave.

38. PUBLIC HOLIDAYS

- 38.1** Weekly employees shall be entitled to the following public holidays without loss of pay: New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day, or such other day as is generally observed in the locality as a substitute for any of the said days respectively.
- 38.2** Provided that by mutual agreement between any employer and employee any other day may be substituted.
- 38.3** An employee who was absent from work on the working day preceding or the working day following the holiday or two or more consecutive holidays or on both of such working days shall not be entitled to payment for the holiday or holidays unless the employee produces or forwards evidence, satisfactory to the employer, that the absence was due to a good and satisfactory cause.
- 38.4** All work done on public holidays shall be paid for at the rate of double time and one half with a minimum payment for four hours work.

39. BEREAVEMENT LEAVE

Employees shall be entitled to two days bereavement leave without loss of pay on each occasion and on production of satisfactory evidence of the death in Australia of the employee's spouse, father, mother, brother, sister, child or parent-in-law. For purposes of this clause, the word "spouse" shall include a de facto spouse.

SCHEDULE A - RESPONDENTS

NORTHERN TERRITORY

Arafura Diving and Salvage, 9 Pott Moil, Darwin 0800
Barclay Bros. Pty Ltd., Sandgroves Crescent, Winnellie 0820
Darwin Diving Academy, 30 Chrisp Street, Rapid Creek 0810
Darwin Scuba Centre, 6 Edmunds Street, Darwin 00800
N & B Marine, Stuart Highway, Winnellie 0820
Sand Pebbles Dive Shop, 17 Todd Crescent, Darwin 0800
Territory Diving Services, Shop 9, Fannie Bay Place, Fannie Bay 0820

QUEENSLAND

Aqua-Lift Salvage and Diving Service, Lot 11, Nambucca Crescent, Pimpama 4209
Aqua-Nautic Pty Ltd, 12 Yeronga Street, Yeronga 4104
Mike Ball Water Sports, 252 Walker Street, Townsville 4810
Barnes Reefdiving Services, 153 Victoria Street, Mackay 4740
Barrier Reef Diving Services, The Esplanade, Airlie Beach 4800
B.D. Services, Acacia Avenue, Beerburrum 4517
BEWR Marine Service Pty Ltd, P.O. Box 297, Bowen 4805
Bottom of the Harbour Diving Services, 2 Waterson Road, Airlie Beach 4800
Brisbane Dive Systems, 536 Rode Road, Chermside 4032
Broken Bay Light Salvage and Diving Services, 39 Main Street, Dundula, Mackay 4740
Budget Demolitions, 65 Telford Street, Birginia 4014
Cairns Deep Sea Divers Den, 319 Draper Street, Parramatta Park, Cairns 4870
Mr Frank Curtin, 92 Hansen Street, Moorooka 4105
Demevel Demolitions Pty Ltd, 26 Industries Road, Salisbury 4107
Dial-a-Diver, C/- Manly Aquasports, Shop 5/88 Stratton Tce. Manly 4178
The Diving Academy, 24 Goonoon Street, Gladstone 4680
East Coast Marine Contractors, 63 Ellerdale Street, Aspley 4038
Engwirda Salvage Pty Ltd, 12 Yeronga Street, Yeronga 4104
Flamingo Bay Research, 34 Hazel Street, Toowoomba 4350
W.A. & D.E. Gardner, 7 Evelyn St, Kallangur 4503
Gladstone Diving Service, 25 Banksia Ave, Gladstone 4680
Halifax Marine, 51 Herbert Street, Ingham 4850
Harris Undersea Services, 44 Higgins St, Gladstone 4680
John Holland, Construction Pty Ltd, Cnr Chasley St & Coronation Drive,
Auchenflower 4066
Hollingsworth Consultants, 445 Upper Edward St, Brisbane 4000
Industrial Divers Pty Ltd, 3 Taldora St, Keperra 4054
Peter Le Muth Diving Services, 128 Samsonvale Road, Strathpine 4500
Lichtnauer Enterprises, 19 Rosalie St, Bardon 4065

Mackay Diving, 1 Mangrove Road, Mackay 4740
McDougal Ireland Pty Ltd, 20 Airy Street, Wacol 4076
McQuade Dredging Co. Pty Ltd, 72 Burleigh Street, Burleigh Waters 4220
Marine Construction & Maintenance Pty Ltd, 9 McConnell St, Bulimba 4171
Marine Contracting Pty Ltd, 22 Wright Street, Bulimba 4171
Marine Engineering & Diving, 40 Ansdell Street, Mr Gravatt 4122
Marine Pacific Australia Pty Ltd, Commercial Diving Service, 42 Barku Court, Hemmant 4174
Mark McSharer, P.M.B. 52, Mackay 4740
North Queensland Pro Diving and Salvage, 204 Ireland Street, Oonoonba 4811
Pacific Diving Services Pty Ltd, 20 Railway Street, Southport 4215
Perrot Salvage and Construction Pty Ltd, 54 Wirrah Close, Bayview Heights, Cairns 4970
Pro-Dive Brisbane, 20 Samford Road, Alderley 4051
Pro-Diving Services Cairns, Marine Parade, Cairns 4870
Queensland Construction Diving Services, 91 Phillip St, Mackay 4740
Queensland Employers federation, 375 Wickham Terrace, Brisbane 4000
Realfs Diving Services, 6 Wilmott Street, Gladstone 4680
Mr G. Richards, 2 Act Court, Alexander Hills 4161
Riverside Constructions Pty Ltd, 44 Agnes St, Thornside 4158
Rockhampton Diving, 61 High Street, North Rockhampton 4700
Sea-Lab Systems, 34 Chester Street, Fortitude Valley 4006
Smit Marine Pty Ltd, 12 Victoria Street, Mackay 4740
Sub-Marine Cleaning Services, 27 Dunne Avenue, Hope Island 4212
Sub-Ocean c/o The Dive Bell, 141 Ingham Road, Townsville 4810
Theiss Contractors Pty Ltd, 146 Kerry Road, Archerfield 4108
Neil Todkill marine Services, 303 Adelaide St, Brisbane 4000
Townsville Slipways, GPO Box 1707, Townsville 4810
Trygon Pacific, P.O. Box 864, Airlie Beach 4741
Whitsunday Diving Services, 34 Manooka Drive, Cannonvale, Airlie Beach 4741
Mr R.L. Zangari, 42 Brae St, Rockhampton 4700

AUSTRALIAN CAPITAL TERRITORY

Underwater Systems Aus. Pty Ltd, 24 Vickers Crescent, Flynn 2615

NEW SOUTH WALES

A.A. Marine Divers Pty Ltd, 25 Palmerston Avenue, Bronte 2024
A.V. Abbey, Rear 457 Miller Street, Cammeray 2062
Action Divers, 410 Maitland Rd, Mayfield West 2304
Advanced Diving Services, 59 Duncan Street, Vincentia 2540
Atlantis Divers, Governor Phillip Pk, Palm Beach 2108
Aurora Diving Pty Ltd, 55 Kowara Crescent, Merimbula 2548
Aus Underwater Engineering, 22 Polonia Avenue, Plumpton 2761

B.B. Diving Services, 182 Northam Avenue, Bankstown 2200
Baxter Contractor Pty Ltd, 177 The Entrance Road, Erina 2250
Birch Bros Mooring Services, 12 Darwin Street, West Ryde 2144
Boat Recovery Services, 14 Clegg Street, Artarmon 2064
Buchanan's Arrow Marine Services, 17 Dora Street, Eastwood 2122
Andy Cameron Diving Services, 38 Kingsway Street, Cronulla 2230
Clareville Underwater Maintenance, 231 Hudsons Pde, Clareville 2107
Clovelly Divers Service, 355 Clovelly Rd, Clovelly 2031
Coastal & Inland Diving Service, 145 Northcott Dve, Adamstown Heights 2289
Colvic Marine Australia Pty Ltd, 133 Alexander Street, Crows Nest 2065
Commercial Diving Service Pty Ltd, South Avondale Rd, Dapto 2530
Dan Fitzhenry & Partners, Inc, Land & Marine Consultants Pty Ltd, Hydrographic House, 8
Cowdroy Avenue, Cammeray 2062
Deep Six Diving Pty Ltd, 1057 Victoria Rd, West Ryde 2144
Demril Pty Ltd, 110 Janet Street, Merewether 2291
Divemaster Services, 169 Taren Point Road, Taren Point 2229
The Diving Co, Pty Ltd, 6 Rowe Street, Harbord 2096
Diving and Underwater Construction Services Pty Ltd, 13/14 Hosking Street,
East Balmain 2041
Mr P.R. Doney, Commercial Diving Contractor, 144 Luxford Rd, Whalan 2770
Eastern Seaboard Marine Services, 37 Prince Albert Pde, Newport Beach 2106
Employers Federation of NSW, 313 Sussex St, Sydney 2000
Engineering Testing and Research Services (NSW) Pty Ltd, 85 Carnarvon Street, Auburn
2144
Gilbert Diving, Cudgen Road, Cudgen, 2487
Gosford Diving Services, 310 Trafalgar Ave, Umina 2257
Gray Diving Services Pty Ltd, P.O. Box 43, 365 West Botany St, Rockdale 2216
Harbourside Marine Contractors, 14 Prince Albert Street, Mosman 2088
John Holland (Constructions) Pty Ltd, 182 Blues Point Rd, North Sydney 2060
The Hornibrook Group, 99 Nicholson Street, St. Leonards 2065
Mr J. Hughes, 66 Coonawarra Court, Yamba 2464
Hunter Allied Divers Pty Ltd, 127 Young Street, Carrington 2294
Hunter Construction and Marine Services Pty Ltd, 21 East Crescent, McMahons Point 2060
Illawarra Aqua Centre, 229 Windang Rd, Windang 2503
Independent Pool Service, 864 King Georges Rd, Hurstville South 2221
International Seawork Pty Ltd, 34 East Street, Five Dock 2046
Mr J. Jacobs, 25 Palmerston Avenue, Bronte 2024
Johnson W. Marine Salvage Pty Ltd, 242 Dora Street, Dora Creek, Morisset 2264
Kratscill Dive Services, 15 Billarong Avenue, Dee Why 2099
Lake Marine and Mooring Pty Ltd, 4 Robey Crescent, Coal Point 2283
Lewis Anchorages, 13 Mangrove Lane, Taren Point 2229
Malway Diving Services, 23 Browning Road, Turramurra 2074
McConnell, Dowell Constructors Ltd, 7th Floor, 8 West Street, North Sydney 2060
Mid Coast Divers, The Marina, Park Street, Port Macquarie 2444
Mid Coast Divers (St Ives), 194 Mona Vale Road, St Ives 2075
Newcastle Aqua Divers Pty Ltd, 656-658 Hunter St, Newcastle West 2302

Oceansteel Pty Ltd, 102 Prince Albert Street, Mosman 2088
Osprey Mooring Service, 12 Queen Street, Concord 2137
Osprey Salvage & Diving Services, Lavender Crescent, North Sydney 2060
Palm Beach Barge Mooring and Salvage Services, 23 Powderworks Road,
Narrabeen 2101
Palm Beach Marine Service Pty Ltd, 1017 Barrenjoey Road, Palm Beach 2108
Phillip Diving Services, 14 Carter Road, Brookvale 2100
Pittwater Mooring Services, 68A Princes Lane, Newport 2106
Mr R.D. Poole, 45 Paine Street, Maroubra 2035
Port Hacking Marine Services Divers, 22 Kareena Road, Miranda 2228
Port Jackson Diving Services, 22 James Street, Punchbowl 2196
Portside Marine, 79 Tamar Street, Ballina 2478
T.D. Preece & Co. Pty Ltd, 265 Condamine Street, Manly Vale 2093
Pro-Diving Services - Jervis Bay, 74 Owen Street, Huskisson 2540
Pro-Diving Services Pty Ltd, 27 Alfreda Street, Coogee 2034
Robmarine Diving Service, 169 Bay Road, Arcadia 2159
R.U. Diving Services, 4 Peckham Avenue, Chatswood 2067
Sea-Coatings (Australia) Pty Ltd, 1 Tonkin Street, Cronulla 2230
Alan Shand, Mobile Divers, 9 Beach Street, Merimbula 2548
Ships Hull Cleaning Services, 106 Louisa Road, Birchgrove 2041
Shoal Haven Commercial Divers, 10 Wasson Street Arcade, Ulladulla 2539
Bill Silvesters Sports Scene, 9 Lawson Street, Byron Bay 2481
Solitary Islands Diver Services Pty Ltd, 396B High St, Coffs Harbour 2450
Southern Commercial Divers, 229 Windang Rd, Windang 2503
South West Rocks Marine & Auto Centre, Gregory St, S.W. Rocks 2441
Subsea Technicians, 171 Taren Point Rd, Taren Point 2229
Sydney Marine Yacht Service, 346 Edgecliff Road, Edgecliff 2027
Ulladulla Dive Company, 75 Princes Highway, Ulladulla 2539
M.W. Vierow and Co. Pty Ltd, 6 Bellbird Crescent, Merimbula 2548
White Industries Pty Ltd, 201 Pacific Highway, North Sydney 2060
Wilson Diving Co Pty Ltd, 127 Young St, Carrington 2294

VICTORIA

Australian Chamber of Manufactures, 370 St Kilda Road, Melbourne 3004
Henri Bource Diving Co, 119 Rouse St, Port Melbourne 3207
Citra Constructions Ltd, 689 Burke Street, Camberwell 3124
Costain Australia Ltd, 147 Eastern Road, South Melbourne 3205
Denso (Aust) Pty Ltd, 411 Victoria Street, Brunswick 3056
Fortuna Diving, 51 Severn Street, Balwyn 3103
Industrial Divers Melbourne, 80 Hotham Road, Niddrie 3042
Outboard Motor Salvage, 2 Clerk Street, Bayswater 3153
Sea-Ways Marine Maintenance, P.O. Box 144, Balaclava Vic. 3183
South Eastern Marine & Salvage, 42 Pound Road, Hastings 3915
Transfield Pty Ltd, 80 Fairbank Road, Clayton 3168
Twikler's C. & M. Diving Services, 51 Severn St. Balwyn 3103

Undersea Marine Services, P.O. Box 214, World Trade Centre, Melbourne 3005
Underwater Training Centre, P.O. Box 943, Morwell 3840
Vibropile Pty Ltd, 69 Grange Road, Cheltenham 3192
Victorian Port Phillip Divers, 24 Hearn St, North Altona 3025
Western Diving Services, 559 Mount Alexander Road, Moonee Ponds 3039
Mr F. Zeigler, RMB 4577 Cashmore 3306

TASMANIA

Aqua Scuba Diving Services Pty Ltd, 54 Collins St, Hobart 7000
Dive Cons., Bridge Road, Lonford 7301
Good Deal Divers, 1 Beach Road, Ulverstone 7315
H.J. Griffiths Scuba Centre Tasmanian Diving Services, 62 Bass Highway, East Wynyard
7325
A.D. Lewis Pty Ltd, 287 Liverpool St, Hobart 7000
Mantissa Divers, 6 Burrow Street, Prospect 7250
Maritime Research (Tas), 11 Albert Street, Youngtown 7249
Seward Maritime, Naval Architects and Commercial Divers, 24 Bourke Street, Launceston
7250
Statewide Diving Service Pty Ltd, Main Street, Sheffield 7306
Tasmanian Diving Services, 62 Scenic Drive, East Wynyard 7325

SOUTH AUSTRALIA

Budget and Maintenance Contracting Pty Ltd, Box 412, Port Adelaide 5015
Department of Marine and Harbours, 293 St Vincents Street, Port Adelaide 5015
Divers International Pty Ltd, 510 Goodwood Road, Daw Park 5041
Divers Service, 80 Grange Rd, Welland 5007
Kinhill Engineers Pty Ltd, 200 East Terrace, Adelaide 5000
Lawrie Diving and Marine Pty Ltd, 7 Jenkins Street, Birkenhead 5015
Marine Industries Pty Ltd, Moorehouse Road, Port Adelaide 5015
S.A. Marine Salvage Pty Ltd, C/- Rowe McGee Brewer & Summer, 193 Wakefield Street,
Adelaide 5000
Seaca Pty Ltd, 72 Suttontown Rd, Mount Gambier 5290
Sea-Coatings S.A. Pty Ltd, P.O. Box 517, Whyalla 5600
Taylor J.N. & Co. Ltd, 15 Nile St, Port Adelaide 5015
West Coast Diving Service, Osborn Street, Whyalla Norrie 5608

WESTERN AUSTRALIA

A.A.I. Mooring Company, 19 Rheola Street, West Perth 6005
A. and D. Diving Services, 3 Margery Road, Wyckombe 6057
A.J. Marine Contracting, 10 Greville Way, Girrawheen 6064
A.S. and D.P. Badger, Stewart Street, Broome 6725
Blue Seas Developments, Deepwater Point, Via Broome 6725
Blue Water Hull Cleaning Services, 30 Harry Way, Willetton 6155

Coburn Diving Company, 34 Bass Road, Bull Creek 6155
Coflexip Stena Offshore Asia Pacific Pty Ltd, 13th Floor, 216 St Georges Terrace, Perth 6000
Cossack Pearls, 32 Chester Street, Fremantle 6160
Mr C.W. Davies, 15 Bell Street, Rockingham 6168
Diver I Diver II Co., Richardson Road, South Coogee 6166
Diving Services, Suite 4, 89 South Terrace, Fremantle 6160
Franmarine Underwater Services Pty Ltd, 41 Wood Street, Fremantle 6160
Fremantle Port Authority, P.O. Box 95, Fremantle 6160
Geraldton Diving Service, 36 Urch St, Geraldton 6530
Global Offshore, P.O. Box 154, Cloverdale 6105
Hughes Diving Service, 36 Urch St, Geraldton 6530
Master Engineering, 120 Beechboro Road, Bayswater 6053
McDermott Industries (Aust) Pty Ltd, 7th Floor, 220 St George's Terrace Perth WA 6000
Kevin Nuttal Diving & Associates, 27 De Grey Crescent, Dampier 6713
Pearl Emporium, Dampier Terrace, Broome 6725
Penguin Diving Pty Ltd, 46 Second Avenue, Shoalwater 6169
Rottnest Marine Salvage, 78 Harris Road, Bicton 6157
Samson Diving Services, 87 Court Street, Point Samson, Wickham 6720
Southcoast Divers, 115 Stead Rd, Albany 6330
South West Diving Centre, Hennessy Rd, Bunbury 6230
Stolt Offshore, 39 Walters Drive, Osborne Park WA 6017
Taylor Diving and Salvage Co Pty Ltd, 21 Alloa Street, Maddington 6109
Taylor Woodrow International Ltd, 78 Mill Point Road, South Perth 6000
W.A. Mooring Services, 34 Bass Road, Bull Creek 6155
Western Pro-Diving Services, 2 O'Beirne Street, Claremont 6010

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

**Submission of the Australian Mines and Metals Association regarding
award modernisation for Diving services (AM2008/68)**

INTRODUCTION

1. The Australian Mines and Metals Association make this submission on behalf of its members in the diving industry having regard to the Commission's obligations under:
 - a. Part 10A of the *Workplace Relations Act 1996* (Cth) (**Act**);
 - b. the Request from the Minister for Employment and Workplace Relations as revised (**Request**); and
 - c. the National Employment Standards (**NES**).
2. This submission is limited to the diving industry and addresses the following matters:
 - a. the principles relevant to the award modernisation process;
 - b. the appropriate award/s scope for the diving industry; and
 - c. content of particular clauses.
3. The Australian Mines and Metals Association has drafted a proposed modern Diving Industry Award 2010 (see Appendix 1) for the Commission's consideration.

SCOPE OF THE MODERN AWARD

4. The proposed modern Diving Industry Award 2010 is expressed to cover employees in the diving industry. The definitions of the diving industry and its parts, being professional diving (offshore), professional diving (inshore) and recreational diving, have yet to be finalised. The Australian Mines and Metals Association will provide further submissions in regard to this once the definitions have been finalised.

SUPERANNUATION

5. The current awards for the diving industry do not contain a superannuation clause or prescribe a default superannuation fund. Superannuation is dealt with exhaustively by legislation and other instruments and it is not necessary that these awards regulate superannuation.

CONTENT OF THE PROPOSED AWARD

The table below sets out the source of each of the terms of the proposed modern Diving Industry Award 2010 at Appendix 1.

Clause	Source
1 - Title	New - the proposed award title is consistent with the terminology used by the Commission.
2 – Commencement date	Model provision.
Clause 3 – Definitions and interpretation	<ol style="list-style-type: none">1. Definitions of Act, Commission, employee, employer, enterprise award, enterprise NAPSA, NAPSA and NES are model provisions.2. Definition of working time for an instructor is from clause 9 of the Recreational Diving Industry Award 2001.

Clause	Source
	3. All other definitions are from clause 12 of the Professional Divers' – Maritime Union of Australia Award 2002.
4 – Coverage	<p>1. Clause 4 is a combination of clause 5 the Professional Divers' – Maritime Union of Australia Award 2002 and clause 5 of the Recreational Diving Industry Award 2001.</p> <p>2. Clause 4.1 and 4.2 are model provisions.</p>
5 - Access to the award and the NES	Model provision.
6 – NES and this award	Model provision.
7 – Award flexibility	Model provision.
8 – Consultation	Model provision.
9 – Dispute resolution	Model provision.
10 – Types of employment	<p>1. Clause 10.1 is a standard provision.</p> <p>2. Clause 10.2(a) is a standard provision.</p> <p>3. Clause 10.2(b)(i) is from clause 13.3.3(d) of the Professional Divers' – Maritime Union of Australia Award 2002.</p> <p>4. Clause 10.2(b)(ii) is from clause 29.3 of the Professional Divers' – Maritime Union of Australia Award 2002.</p> <p>5. Clause 10.2(b)(iii) is from clause 18.3 of the Recreational Diving Industry Award 2001.</p> <p>6. Clause 10.2(c) is a model provision.</p>
11 – Termination of employment	Model provision.
12 – Redundancy	Model provision.
13 – Minimum wages	<p>1. Clause 13.1(a) is from clause 15.1 of the Professional Divers' – Maritime Union of Australia Award 2002, however, the rates included have been listed as weekly for the sake of consistency.</p> <p>2. Clause 13.1(b) is from clause 29.1 of the Professional Divers' – Maritime Union of Australia Award 2002.</p>

Clause	Source
	<ol style="list-style-type: none"> 3. Clause 13.1(c) is from clause 18.1 of the Recreational Diving Industry Award 2001, however, the rates have been listed as weekly for the sake of consistency. 4. Please note the rates do not include any required percentage increases.
14 – Allowances	<ol style="list-style-type: none"> 1. Clause 14.1 is from clause 16 of the Professional Divers' – Maritime Union of Australia Award 2002. 2. Clause 14.2 is from clause 30 of the Professional Divers' – Maritime Union of Australia Award 2002. 3. Clause 14.3 is from clause 20 of the Recreational Diving Industry Award 2001. 4. Please note the allowances do not include any required percentage increases.
15 – Payment of wages	Model provision.
16 –Hours of work	<ol style="list-style-type: none"> 1. Clause 16.1 is from clause 20 of the Professional Divers' – Maritime Union of Australia Award 2002. 2. Clause 16.2 is from clause 33 of the Professional Divers' – Maritime Union of Australia Award 2002. 3. Clause 16.3 is from clause 21 of the Recreational Diving Industry Award 2001.
17 – Maximum weekly hours	Model provision.
18 – Overtime and penalty rates	<ol style="list-style-type: none"> 1. Clause 18.1 is from clause 15.1.1 of the Professional Divers' – Maritime Union of Australia Award 2002. 2. Clause 18.2 is from clause 34 of the Professional Divers' – Maritime Union of Australia Award 2002. 3. Clause 18.3 is from clause 23 of the Recreational Diving Industry Award 2001. 4. Clause 18.4 is a model provision.

Clause	Source
19 – Rostering	Clause 19 is from clause 21.2, 21.3, 21.4, 21.5, 21.8 to 21.13 of the Professional Divers' – Maritime Union of Australia Award 2002.
20 – Breaks	<ol style="list-style-type: none"> 1. Clause 20.1 is from clause 35 of the Professional Divers' – Maritime Union of Australia Award 2002. 2. Clause 20.2 is from clause 22 of the Recreational Diving Industry Award 2001.
21 – Annual leave	<ol style="list-style-type: none"> 1. Clause 21.1 is a standard provision. 2. Clause 21.2 is from clause 21.1 and 21.14 of the Professional Divers' – Maritime Union of Australia Award 2002. 3. Clause 21.3(a) refers to the NES for annual leave entitlements 4. Clause 21.3(b) is from clause 36.5 of the Professional Divers' – Maritime Union of Australia Award 2002 and clause 24.4 of the Recreational Diving Industry Award 2001. 5. Clause 21.3(c) is from clause 36.4 of the Professional Divers' – Maritime Union of Australia Award 2002 and clause 24.2 of the Recreational Diving Industry Award 2001.
22– Personal/carer's leave and compassionate leave	Refers to the NES.
23 – Community service leave	Refers to the NES.
24 – Public holidays	<ol style="list-style-type: none"> 1. Clause 24.1 is a new provision relating to clause 15.1.1 of the Professional Divers' – Maritime Union of Australia Award 2002. 2. Clause 24.2 refers to the NES.

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24 July 2009

Appendix One

Proposed Diving Industry Award 2010

Diving Industry Award 2010

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Part 1—Application and Operation

1. Title

This award is the *Diving Industry Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Fair Work Act 1996* (Cth)

atmospheric diving systems (ADS) will mean a manned diving system such as OMB, ARMS, MOB, JIM, WASP and similar systems which allow an operator to work underwater without being subjected to greater than atmospheric pressure

Commission means the Australian Industrial Relations Commission or its successor

designated assembly point means the point from which the employer provides transport to the designated point of embarkation

designated point of embarkation means the point from which transport to the offshore location is provided

diving industry means YET TO BE DEFINED

employee has the meaning in the Act

employer has the meaning in the Act

enterprise award has the meaning in the Act

enterprise NAPSA means a NAPSA derived from a State award which immediately prior to 27 March 2006 applied only to a single business or part of a single business

NAPSA means notional agreement preserving a State award and has the meaning in the Act

NES means National Employment Standards

offshore exploration and development diving means and includes all diving from oil drilling rigs, hydrocarbons exploration vessels or platforms and diving in or in connection with the construction and maintenance of platforms and associated submarine pipelines

professional diving (inshore) means YET TO BE DEFINED

professional diving (offshore) means YET TO BE DEFINED

recreational diving means YET TO BE DEFINED

saturation techniques means procedures in accordance with which a diver is continuously subjected to an ambient pressure greater than atmospheric pressure so that the body tissues and blood become saturated with the inert element of the breathing mixture

short term project will be a continuous project not exceeding 56 days

standard rate means the rate of pay for a diver in clause 13.1(c)

working time for an instructor means instruction time plus pre and post dive briefings of a maximum 30 minutes duration each

- 3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

This industry award covers employers throughout Australia who are engaged in the diving industry in respect of work by their employees in a classification in this award and their employees engaged in the classifications listed in clause 13—Classifications and minimum wage rates, of this award, to the exclusion of any other modern award.

4.1 Exclusions

This award does not cover:

- (a) an employer bound by an enterprise award or enterprise NAPSAs with respect to any employee who is covered by the enterprise award or enterprise NAPSAs; and
- (b) an employee excluded from award coverage by the Act.

- 4.2 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The NES and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.

7.4 For the purposes of clause 7.3(b) the agreement will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:

- (a) the agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this award and any applicable agreement made under the Act, as those instruments applied as at the date the agreement commences to operate; and
- (b) the agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.

7.5 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;

- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 7.6 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 7.8 The agreement may be terminated:
- (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the employer and the individual employee.
- 7.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

- 9.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2 If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3 The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4 Where the matter in dispute remains unresolved the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

An employee may be engaged on a full-time, part-time or casual basis.

10.1 Full-time employment

A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.

10.2 Casual employment

(a) A casual employee is one engaged and paid as such. A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the hours required to be worked by the employer.

(b) A casual employee will be paid in accordance with the below:

(i) professional diving industry (offshore) – no less than 1/7th of the minimum weekly rate of pay for their classification in clause 13—Classifications and minimum wage rates, plus a casual loading of 127.5%;

(ii) professional diving industry (inshore) - no less than 1/33rd of the minimum weekly rate of pay for their classification in clause 13—Classifications and minimum wage rates, plus a casual loading of 20%;

(iii) recreational diving industry - no less than 1/38th of the minimum weekly rate of pay for their classification in clause 13—Classifications and minimum wage rates, plus a casual loading of 10%;

(c) The casual loading is paid in lieu of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment. The loading constitutes part of the casual employee's all purpose rate.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration will be sufficient.
- (c) This entitlement applies instead of clause 11.3.

12.5 Transitional provisions

- (a) Subject to clause 12.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:
 - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.

- (b) The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) This clause ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Classifications and minimum wage rates

13.1 An employee under this award will be paid at the rate of pay prescribed in accordance with this clause appropriate to that employee's classification. Such classification is defined and set out in Schedule A—Classifications.

(a) Professional diving (offshore)

A full-time adult employee must be paid a minimum weekly rate for their classification as set out in the table below:

Classification	Minimum weekly rate	Aggregate overtime component	Aggregate weekly rate
Diving Superintendent	690.75	807.40	1,498.15
Diving Supervisor	635.30	737.63	1,372.93
Supervisor (ADS Operations)	635.30	737.63	1,372.93
Hyperbaric Welder	606.70	701.61	1,308.31
Life Support Technician	560.55	638.76	1,199.31
Senior Operator (OMB Operations)	560.55	638.76	1,199.31
Systems Maintenance Technician	512.75	578.56	1,091.31
Diver	465.20	518.64	983.84
Operator (ADS Operations)	465.20	518.64	983.84
Divers Attendant	379.05	409.95	789.00

(b) Professional diving (inshore)

Classification	Minimum weekly rate
Diving supervisor	999.80
Hyperbaric welder	758.80
Diver	722.20
Diver's attendant	570.20

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(c) Recreational diving

Classification	Minimum weekly rate
Diving Instructor	535.53
Diving Master	535.53

14. Allowances

14.1 Professional diving (offshore)

(a) Disability allowance

Employees will receive an additional payment of \$45.14 for each on-duty day (or in the case of casual employees \$53.60 per on-duty day) on a support vessel whether dynamically positioned or anchor moored in recognition of all disabilities and work requirements associated with living and working from such a vessel. The amounts shown reflect payment for the on-duty and off-duty period.

(b) Diving allowances

(i) Diving other than ADS Operations

- in addition to the wage rates set out in 13.1(a), a diver shall be paid a diving allowance of \$2.64 per metre or \$0.80 per foot or equivalent pressure with a minimum allowance calculated as fifty (50) times the diving allowance per foot except where a diver is engaged in a dive using saturation techniques in which case the minimum allowance shall be calculated as two hundred and fifty (250) times the diving allowance per foot; and
- such allowance shall be payable once in respect of the greatest depth or equivalent pressure incurred in each period worked. For the purposes of this subclause a period worked shall begin from the time the diver enters the water or is subject to greater than atmospheric pressure and shall end 12 hours later. Further periods worked shall begin each 12 hours if at the end of a period worked or a further period worked, a diver is still subject to greater than atmospheric pressure.

(ii) ADS Operations

In addition to the wage rates set out in 13.1(a), a Senior Operator (OMB Operations) and Operators (ADS Operations) shall be paid a diving allowance of \$1.32 per metre or \$0.40 with a minimum allowance calculated as two hundred and fifty (250) times the diving allowance per foot. Such allowance shall be payable only once in respect of dives commenced within a twelve hour period.

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(iii) Practice or training dives

The diving allowances referred to above shall not be paid to persons performing practice or training dives or to an Operator (ADS Operations) during the first twelve month period of training. Underwater services shall not be performed for the employer during practice or training dives.

(iv) Diving superintendents and diving supervisors

- Diving superintendents, diving supervisors and supervisors (ADS Operations) shall receive twenty per cent and life support technicians shall receive fifteen per cent of the average diving allowance paid to divers or operators (ADS Operations) under their control. Average diving allowance will be calculated daily by dividing the total diving allowance earned in each day or part thereof by divers or operators (ADS Operations) under the control of a Diving superintendent, Diving supervisor or Supervisor (ADS Operations) by the number of divers or operators (ADS Operations) who earned diving allowance in that day.
- Surface oriented dives made in conjunction with saturation diving operations shall be calculated separately for the purpose of calculating the average diving allowance.

(c) Living away from home allowance

An allowance of \$31.50 per day shall be paid to each employee for each day or part thereof of their duty period offshore or in circumstances where employees would normally be working offshore and are temporarily accommodated onshore away from their home. With the exception of annual leave the allowance shall not be payable during periods of leave or authorised absences nor during periods in which the employee is specifically engaged on shore based duties including equipment mobilisation or demobilisation where the employee is able to live at home.

(d) Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography shall, in addition to the salary rate applicable to their classification, be paid an allowance for each day or part thereof on which they are engaged in such duties. The allowance shall be \$39.73 per day.

(e) Hyperbaric welding allowance

- (i) The hyperbaric welding rate specified in 13.1(a) shall apply from the date an employee is required to carry out duties related to the welding to be performed. The payment shall cease when the employee is no longer required by the employer to carry out tasks related to the welding.
- (ii) A hyperbaric welder shall be entitled to a payment of \$3.28 per linear millimetre for a successfully completed weld. For the purpose of this

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clause, "successfully completed" means a weld which has been accepted by the client without the necessity for repair.

- (iii) Provided that in lieu of 14.1(e)(ii) a hyperbaric welder shall be entitled to payment of \$2.20 per linear millimetre for a weld which requires repair prior to being accepted by the client.
- (iv) The payments prescribed in 14.1(e)(ii) and 14.1(e)(iii) shall apply only to members of the nominated hyperbaric welding team who have been coded for that particular hyperbaric welding task.

(f) Loss of personal effects allowance

An employee will be reimbursed up to \$1500.00 for the loss of personal effects normally required while offshore, which are lost due to fire, explosion, collision, foundering or collapse of a fixed platform, vessel or work barge. Provided that no payment will be made where the employee's loss is made good by any insurance policy or other claim on the employer or any third party.

(g) Transportation and accommodation allowances

- (i) At the beginning and end of each on-duty period the employer shall provide transport between the designated assembly point and the work site. Employees are required to present themselves at the designated point of embarkation by use of the transport provided by the employer or otherwise at their own expense. If the transport provided is in the form of a hired vehicle the employee shall be responsible for the care of the vehicle and if an accident occurs while the employee is in charge of the vehicle and is proven to be under the influence of illegal drugs or alcohol, the employer shall have the right to recover from the employee any cost incurred by the employer resulting from such accident.
- (ii) During the period of duty, employees who cannot reasonably return to their usual place of abode shall be reimbursed the cost of reasonable accommodation and meals. Where such accommodation and meals are provided by the employer the provisions of this clause do not apply.
- (iii) The employer shall notify the employees of the designated assembly point and point of embarkation for each job.

(h) Clothing and Equipment Allowances

- (i) Employees shall be reimbursed for the purchase of clothing and equipment required for the performance of duties. The provisions of this clause do not apply if the employer provides such clothing and equipment.
- (ii) Where a permanent employee is required to supply and maintain his/her own wetsuit and required to supply approved safety footwear she or he will be paid an allowance of \$79.50 per calendar month.
- (iii) In the case of a casual employee, the allowance will be \$6.40 per day.

(i) Medical examination allowance

- (i)** Where the employer requests that a prospective employee undertake a pre-employment medical examination, the employee shall be reimbursed for the costs of attending such examination.
- (ii)** Where Commonwealth or State and Territory Legislation require that employees bound by this Award must submit to medical examination, then upon employees complying with such Act or Regulation, the employer will reimburse the employee for all costs associated with such examination.

(j) Insurance reimbursement allowance

Where the employee elects to obtain insurance cover against death from any cause with a sum insured of \$110,000 to apply during the period of the employees employment, then upon presentation of verifiable evidence of the purchase of such insurance policy, the employer shall reimburse the employee for the cost of the policy. The provisions of this clause do not apply if the employer provides such insurance coverage directly.

14.2 Professional diving (inshore)

(a) Diving allowance

- (i)** In addition to the wage rates set out in 13.1(b) a diver shall be paid a diving allowance of \$0.97 per foot or \$3.20 per metre of water or equivalent pressure. Such allowance shall be payable once in respect of the greatest depth or equivalent pressure incurred each day.
- (ii)** Provided that the diving allowance specified herein shall only apply to dives made in excess of 50 feet or fifteen metres of water or equivalent pressure or when decompression is necessary whichever shall occur first and shall be calculated from the surface to the maximum depth or equivalent pressure attained during the dive.
- (iii)** The diving allowance referred to above shall not be paid to persons performing practice or training dives. Underwater services shall not be performed for the employer during practice or training dives.
- (iv)** Diving supervisors shall receive twenty percent of the average diving allowance paid to divers under their control. Average diving allowance will be calculated daily by dividing the total diving allowance earned by divers whilst under the control of a diving supervisor by the number of divers who earned diving allowance on that day.

(b) Non-destructive testing allowance

Employees engaged in non-destructive testing of structures by the methods of magnetic particle testing, ultrasonic testing and radiography shall, in addition to the salary rate applicable to their classification, be paid an allowance for each day or part thereof on which they are engaged in such duties. The allowance shall be \$48.44 per day.

(c) Hyperbaric welding allowance

- (i) The hyperbaric welding rate specified in 14.2(c)(ii) shall apply from the date an employee is required to carry out duties related to the welding to be performed. The payment shall cease when the employee is no longer required by the employer to carry out tasks related to the welding.
- (ii) A hyperbaric welder shall be entitled to a payment of \$3.61 per linear millimetre for a successfully completed weld. For the purpose of this clause, "successfully completed" means a weld which has been accepted by the client without the necessity for repair.
- (iii) Provided that in lieu of 14.2(c)(ii) a hyperbaric welder shall be entitled to payment of \$2.44 per linear millimetre for a weld which requires repair prior to being accepted by the client.
- (iv) The payments prescribed in 14.2(c)(ii) and 14.2(c)(iii) shall apply only to members of the nominated hyperbaric welding team who have been coded for the particular hyperbaric welding task.

(d) Annual medical exam allowance

Employees who are subjected to greater than atmospheric pressure shall be reimbursed the cost of an annual medical examination which shall include but not be limited to the requirement set out in Appendix A of the Standards Association of Australia Underwater Air Breathing Operations Standard AS2299. The provisions of this clause do not apply where the employer provides for the service.

(e) Meal allowance

Employees who are required to work overtime for more than two hours on any day after the usual finishing time shall be entitled to an allowance of \$6.58 meal money unless they had been notified the previous day that their services would be required or a hot meal is provided by the employer. Provided that where employees are notified that they will be required to work overtime the following day and such order is cancelled after they have left work on the day on which they were notified they shall be paid the sum of \$6.58 meal money.

(f) Fares and travelling time allowance

- (i) Employees who commence and finish work within a 50 kilometre radius of the General Post Office in the city or town in which the employer's registered business address is situated shall receive a fare allowance of \$10.60 per day.
- (ii) Where employees commence and finish work beyond the 50 kilometre radius referred to in 14.2(f)(i) they shall be reimbursed for the actual fares hereof incurred and all time spent travelling beyond this radius shall be paid at ordinary rates.

(g) Distant work allowance

- (i) For the purpose of this clause distant work is that in respect of which the distances or the travelling facilities to and from such places of work

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make it reasonably necessary that employees shall live and sleep at some place other than their usual place of residence at the time of commencing such work. Provided that if employees whilst employed on distant work change their usual place of residence such new place of residence or any further change thereof (if made whilst employed on distant work) shall be their usual place of residence for determination of whether the work is distant work within the meaning of this clause.

- (ii) Employees engaged on distant work shall be conveyed with equipment to and from work at their employer's expense. Such conveyance shall be made only once unless the employee is recalled and sent again to the place of work, when it shall be made each time that this happens. Provided that return fares and travelling time need not be paid to employees who:
- leave the employment of their own free will before the completion of the job or before being three months in such employment, whichever first happens, or is discharged for incompetence within one week of engagement; or
 - is discharged for misconduct.
- (iii) The rate of pay for time occupied in travelling to and from distant work shall be ordinary rates, except on Sundays and holidays when it shall be time and one-half. Employees shall also be paid an amount of \$5.11 to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.
- (iv) The maximum travelling time to be paid for shall be twelve hours out of every twenty-four hours, or when sleeping berth is provided by the employer for all night travel, eight hours out of every twenty-four hours.
- (v) On distant work employees may be paid, by mutual agreement with the employer, an allowance of \$267.63 week or such greater amount as may be agreed upon, in return for which employees shall be responsible for securing their own accommodation and meals. In the case of broken parts of the week occurring at the beginning or ending of the employment on a distant job the allowance shall be \$38.28 per day or 1/7 of any other weekly amount agreed upon. The provisions of this clause do not apply if the employer provides reasonable board and lodging.
- (vi) Employees who consent to use their own vehicle in the course of their employment shall be paid an allowance of \$0.56 per kilometre. This allowance is for the use of the vehicle by the employee for transporting the employee and the employee's personal diving equipment.

(h) Diving clothing and equipment allowance

Employees who supply their own wet suits and personal diving equipment including weightbelt and diving knife shall be paid, in addition to the ordinary rate, an allowance of \$6.83 per day on each day on which the equipment is used.

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(i) Protective clothing and equipment allowance

- (i)** Employees should be reimbursed for the cost of all industrial protective clothing and safety equipment other than that prescribed 14.2(h) s required by the employer to be worn. This provision does not apply if the clothing and the equipment is supplied by the employer.
- (ii)** Casual employees may, in lieu of provision of footwear, be paid an amount of \$2.44 per day of employment for the purchase of approved safety footwear. This allowance shall not be payable where safety footwear is not required to be worn.

14.3 Recreational diving

(a) Accommodation and meals offshore

- (i)** The employee will be reimbursed for accommodation purchased whilst on board a vessel travelling offshore for a journey of one or more nights. This provision will not apply where accommodation is provided by the employer.
- (ii)** The employee will be reimbursed for all meals purchased whilst on board a vessel travelling offshore for a journey of one or more nights. This provision does not apply where the meals are provided by the employer.

(b) Distant work onshore

- (i)** For the purpose of this clause distant work means that the distances or the travelling facilities to and from places of work make it reasonably necessary that employees live and sleep at some place other than their usual place of residence at the time of commencing work.
- (ii)** If employees whilst employed on distant work change their usual place of residence, such new place of residence or any further change of residence (if made whilst employed on distant work) will be regarded as the employee's usual place of residence for determination of whether the work is distant work within the meaning of this clause.
- (iii)** Employees engaged on distant work and who are required to travel, with equipment, to and from work will be reimbursed for the cost of such travel unless the employer provides the means of travel.
- (iv)** Where an employee is recalled and required to return on more than one occasion to the place of work, the employer will reimburse the employee the cost of obtaining conveyance on each occasion, provided that where the employer provides such conveyance, the obligation with respect to payment or reimbursement shall have been fulfilled.
- (v)** The employer will not reimburse the employee for the cost of travel and travelling time of an employee who:
 - leaves the employment of their own free will before the completion of the job or before being three months in such employment, whichever happens first, or
 - is discharged for incompetence within one week of engagement; or

Diving Industry Award 2010

- is discharged for misconduct.
- (vi) The rate of pay for time occupied in travelling to and from distant work will be ordinary rates, except on Sundays and holidays when it will be time and one-half.
- (vii) Employees will also be paid an amount of \$5.30 to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.
- (viii) The maximum travelling time to be paid for is twelve hours out of every 24 hours, or when a sleeping berth is provided by the employer for all night travel, eight hours out of every 24 hours.
- (ix) The employee will be reimbursed for accommodation purchased whilst on distant work. The provision will not apply where accommodation is provided by the employer.
- (x) The employee will be reimbursed for all meals purchased whilst on distant work. This provision does not apply where the meals are provided by the employer or where the provisions of clauses 14.3(b)(xi) and 14.3(b)(xii) apply.
- (xi) In special circumstances employees, by mutual agreement with the employer, may be paid an allowance of \$265.90 per week or such greater amount as may be agreed on, in return for the employees being responsible for securing their own accommodation and meals.
- (xii) In the case of broken parts of the week occurring at the beginning or ending of employment on a distant job, the allowance is \$37.90 per day or 1/7th of any other weekly amount agreed on.

(c) Vehicle allowance

Employees who consent to use their own vehicle in the course of their employment, for the transportation of themselves and their personal diving equipment will be paid an allowance of 50 cents per kilometre.

(d) Language Allowance

The language allowance of \$1950.00 per annum is payable for the required skill to instruct in a language other than English, where required by the employer.

14.4 Method of adjusting expense related allowances

At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

17. Maximum weekly hours

17.1 This clause of the award provides industry specific detail and supplements the NES which deals with maximum weekly hours.

17.2 For the purposes of the NES an employee's weekly hours may be averaged over a period of up to 26 weeks.

18. Overtime and penalty rates

18.1 Professional diving (offshore)

The aggregate weekly rate of pay specified in clause 13.1(a) includes payment for the various rosters that may be worked, overtime, the nature of the industry and penalties and conditions of employment applicable to the work performed.

18.2 Professional diving (inshore)

(a) An employee will be paid the following additional payments for all work done in addition to their ordinary hours:

(i) 50% of the ordinary hourly base rate of pay for the first two hours and 100% of ordinary hourly base rate of pay thereafter, for overtime worked from Monday to Saturday;

(ii) 100% of the ordinary hourly base rate of pay for overtime worked on a Sunday; and

(iii) 150% of the ordinary hourly base rate of pay for overtime worked on a public holiday.

(b) An employee recalled to work overtime after leaving the employer's premises (whether notified before or after leaving the premises) will be engaged to work for a minimum of four hours or will be paid for a minimum of four hours work in circumstances where the employee is engaged for a lesser period.

18.3 Recreational diving

An employee will be paid 50% of the ordinary hourly base rate of pay for the first two hours and 100% of ordinary hourly base rate of pay thereafter, for overtime in excess of 12 hours per day.

18.4 Method of calculation

(a) When computing overtime payments, each day or shift worked will stand alone.

(b) Any payments under this clause are in substitution of any other loadings or penalty rates.

19. Rostering

This clause only applies to employees engaged in professional diving (offshore).

19.1 Rosters

The employer shall establish a regularly recurring roster of equal on-duty and off-duty periods for each work site. The on-duty and off-duty periods shall each be of 14 days' duration, provided that other equal periods may be worked by agreement between the parties.

- (a) The on-duty period for employees, other than casual employees shall commence on the day of arrival at the designated point of embarkation to the work site.
- (b) The off-duty period for employees, other than casual employees shall commence on the day of departure from the work site. Provided that if the employee is held over beyond midnight on his crew change day and/or subsequent days, he shall be paid one days pay at the base rate but he shall not accrue a subsequent leave day.

19.2 Not attending for duty

Employees not attending for duty in a rostered on-duty period other than as provided for elsewhere in this clause shall not receive payment nor accrue off-duty leave days in respect of such period.

19.3 Roster changes by the employer

Where a roster is changed by the employer and the commencement of an employee's on-duty period is advanced, the employee shall be considered to be on-duty from the day of arrival at the designated point of embarkation.

19.4 Roster changes by the employee

Where a roster is changed at the request of an employee the employee shall be either on-duty and accruing off-duty leave days or off-duty and using off-duty leave days as provided in 19.1(a) and (b).

19.5 Returning to work early

Where an employee commences duty prior to the commencement of the employee's rostered on-duty period the employee shall be considered to be on-duty from the day of arrival at the designated point of embarkation.

19.6 Prevented from commencing an on-duty period

Where an employee reports for duty at a designated assembly point but cannot be transported to the offshore work site due to weather conditions, insufficient work or other circumstances beyond the employer's control, the period of such delay will be regarded as an on-duty period provided that the employer may gainfully employ the employee onshore.

The provisions of this subclause do not affect the right of an employer to stand down an employee.

19.7 Prevented from remaining on-duty

Where during an on-duty period an employee cannot remain at the offshore work or other circumstances beyond the employer's control, such days shall be considered to

be on-duty days provided that the employer may gainfully employ the employee onshore.

The provisions of this subclause do not affect the right of an employer to stand down an employee.

19.8 Prevented from commencing off-duty period

Where due to weather conditions or other circumstances an employee is delayed offshore and prevented from commencing a rostered off-duty period the employee shall be on-duty and accruing off-duty leave days until the employee actually commences an off-duty period.

19.9 Work on first day of off-duty period

To allow a smooth change over of on-duty and off-duty crew employees will normally be required to work for some period of the first day of their off-duty period on the understanding that they will on average not work a corresponding period on the first day of their on-duty period.

20. Breaks

20.1 Professional diving (inshore)

Employees shall be entitled to a meal break of a duration and at a time fixed by mutual agreement provided that no employee shall work more than three hours without such a break.

20.2 Recreational diving

(a) Rest break

Each employee is entitled to a ten minute rest break during the morning or afternoon without loss of pay at a time mutually agreed between the employer and the employee.

(b) Meal break

Each employee is entitled to an unpaid meal break at a time fixed by mutual agreement between the employer and the majority of employees concerned provided that no employee works more than five hours without a meal break.

Part 6—Leave and Public Holidays

21. Annual leave

21.1 Payment for annual leave

The amount to be paid to an employee prior to going on leave must be the amount the employee would have been paid for working ordinary hours during the period of annual leave in accordance with clause 13—Classifications and minimum wage rates.

21.2 Professional diving (offshore)

- (a) For each on-duty day worked by an employee, other than casual employee, the employee shall receive one paid off-duty leave day.
- (b) Pursuant to the provisions of this clause an employee may accrue more off-duty leave days than are taken or take more off-duty leave days than have been accrued. Where the employee accrues more off-duty leave days than are taken the balance shall be recorded and taken at another time. Where the employee takes more off-duty leave days than are accrued they shall be deducted from any balance of off-duty days yet to be taken. Where that results in a negative balance of off-duty leave days, that number of days will be subtracted from the employee's pay for that month. A positive balance of off-duty days owed to the employee on termination shall be paid to the employee at that time.

21.3 Professional diving (inshore) and recreational diving

- (a) This clause of the award supplements the provisions of the NES which deal with annual leave. Annual leave does not apply to casual employees.

(b) Annual leave loading

When an employee takes a period of paid annual leave, the employee will be paid an annual leave loading of 17.5% in addition to the payment required to be made under clause 21.1.

(c) Taking of annual leave

Annual leave shall be given and taken in a continuous period or, if the employer and employee so agree, in two separate periods and within six months of falling due.

22. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the NES.

23. Community service leave

Community service leave is provided for in the NES.

24. Public holidays

24.1 Professional diving (offshore) employees are required to work public holidays which fall within their rostered on-duty period. Payment for work performed on public holidays forms part of the aggregate weekly rate of pay in accordance with clause 18.1.

24.2 Professional diving (inshore) and recreational diving employees are entitled to public holidays in accordance with the NES.

Schedule A—Classification and Structure

In each of the classifications under this award it is a requirement that an employee must:

- (a) perform work in a fully flexible manner as reasonably required by the employer and in accordance with the employee's ability and competence;
- (b) acquire any skills as reasonably requested by the employer and, where necessary, undertake required training and assist with the training of others; and
- (c) use such tools and equipment as may be required, subject to the limit of the employee's skills and competence and provided that the employee has been properly trained in the use of such tools and equipment.

In addition to the classification descriptions below, employees may be required to carry out the duties of deckhands, cooks or skippers in addition to instructing and supervising diving operations, shopwork, interviewing prospective clients and undefined duties.

Diving Industry Award 2010

- A.1 Diver** means an employee trained and experienced in diving techniques, in underwater breathing, in the use of equipment used in diving operations, in the administration of first-aid, and the routine maintenance of diving systems.
- A.2 Diver's Attendant** means an employee who has adequate knowledge of underwater work, the signals and communication devices used in diving operations, decompression procedures and equipment used in diving operations. The diver's attendant shall carry out the functions of attending a diver, including assisting the diver to dress and undress, handling hoses and/or lifelines and such other duties as may be assigned by the diving supervisor but shall not be required to perform underwater services.
- A.3 Diving Superintendent** means an employee placed in charge of a 24 hour diving operation to co-ordinate the diving work and to relieve diving supervisors engaged in that operation where and when necessary.
- A.4 Diving Supervisor** means a diver experienced in diving and diving techniques appointed by the employer in writing to supervise diving operations, to instruct other divers and to be responsible for safe diving practices. The diving supervisor will also be competent to supervise all classes of hydrocarbon exploration and development diving applicable to and appropriate to the particular operation which may include using helium/oxygen or similar mixtures, using submarine observation chambers and operating from submarine working chambers. In addition, the diving supervisor is responsible to the employer for other on-site supervisory functions relating to matters within the scope of this award, including liaison with other companies, supervision of employees, keeping of appropriate records and reports ensuring that all equipment is kept and properly maintained to comply with all rules and regulations and that all expendable items are maintained at an acceptable stock level.
- A.5 Hyperbaric Welder** means an employee who has been coded for a particular hyperbaric welding task and who is appointed to perform work in such capacity by the employer.
- A.6 Life Support Technician** means an employee who will, under the supervision of a diving supervisor, control and monitor all the systems and functions which relate to the life support, safety and health of any person inside hyperbaric chambers used in saturation diving.
- A.7 Senior Operator (OMB Operations)** means an employee appointed as such to operate an observation manipulator bell as "OMB", "ARMS" or "MOB".
- A.8 Systems Maintenance Technician** means an employee engaged specifically to perform maintenance and repair tasks on diving and ancillary equipment. Such an employee shall typically have a relevant trade qualification and be familiar with diving operations.

Pay Guide - Professional Diving Industry (Industrial) Award 2010

[MA000108]

Published 28 June 2016

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Rates of pay

Adult

Offshore divers - Full-time

Classification	Weekly pay rate	Hourly pay rate
Offshore divers - diving superintendent	\$2,243.78	\$59.05
Offshore divers - diving supervisor	\$2,087.21	\$54.93
Offshore divers - ADS operations - supervisor	\$2,087.21	\$54.93
Offshore divers - hyperbaric welder	\$2,014.63	\$53.02
Offshore divers - life support technician	\$1,892.19	\$49.79
Offshore divers - OMB operations - senior operator	\$1,892.19	\$49.79
Offshore divers - systems maintenance technician	\$1,763.43	\$46.41
Offshore divers - diver	\$1,642.00	\$43.21
Offshore divers - ADS operations - operator	\$1,642.00	\$43.21
Offshore divers - diver's attendant	\$1,408.16	\$37.06

Inshore divers - Full-time

Classification	Weekly pay rate	Hourly pay rate	Overtime - Monday to Saturday - first 2 hours	Overtime - Monday to Saturday - after 2 hours	Overtime - Sunday	Public holiday
Inshore divers - diving supervisor	\$1,268.40	\$38.44	\$57.66	\$76.88	\$76.88	\$96.10
Inshore divers - hyperbaric welder	\$984.10	\$29.82	\$44.73	\$59.64	\$59.64	\$74.55
Inshore divers - diver	\$940.90	\$28.51	\$42.77	\$57.02	\$57.02	\$71.28
Inshore divers - diver's attendant	\$773.60	\$23.44	\$35.16	\$46.88	\$46.88	\$58.60

Offshore divers - Casual

Classification	Hourly pay rate
Offshore divers - diving superintendent	\$34.01
Offshore divers - diving supervisor	\$31.79
Offshore divers - ADS operations - supervisor	\$31.79
Offshore divers - hyperbaric welder	\$30.68
Offshore divers - life support technician	\$29.09
Offshore divers - OMB operations - senior operator	\$29.09
Offshore divers - systems maintenance technician	\$27.24
Offshore divers - diver	\$25.60
Offshore divers - ADS operations - operator	\$25.60
Offshore divers - diver's attendant	\$22.28

Inshore divers - Casual

Classification	Hourly pay rate	Overtime - Monday to Saturday - first 2 hours - Inshore divers	Overtime - Monday to Saturday - after 2 hours - Inshore divers	Overtime - Sunday - Inshore divers	Public holiday - Inshore divers
Inshore divers - diving supervisor	\$48.05	\$72.08	\$96.10	\$96.10	\$120.13
Inshore divers - hyperbaric welder	\$37.28	\$55.92	\$74.56	\$74.56	\$93.20
Inshore divers - diver	\$35.64	\$53.46	\$71.28	\$71.28	\$89.10
Inshore divers - diver's attendant	\$29.30	\$43.95	\$58.60	\$58.60	\$73.25

Allowances

Allowances	Rate
Offshore divers	
Clothing and equipment reimbursement	reimbursement for the cost of the clothing and equipment
Disability allowance - full-time	\$62.26 per on-duty day on a support vessel
Disability allowance – casual	\$73.85 per on-duty day on a support vessel
Diving allowance - not ADS operations	\$3.66 per metre or \$1.09 per foot, or equivalent pressure, with a minimum payment of \$54.50 per 12 hour period
Diving allowance - ADS operations	\$1.79 per metre or \$0.54 per foot, or equivalent pressure, with a minimum payment of \$135.00 per 12 hour period
Diving allowance - diving superintendents, diving supervisors, supervisors - ADS operations	20% of the average diving allowance paid to divers or operators - ADS operations under supervision
Diving allowance - life support technicians	15% of the average diving allowance paid to divers or operators - ADS operations under supervision
Hyperbaric welding allowance - weld accepted by client	\$4.51 per linear millimetre
Hyperbaric welding allowance - requires repair prior to client acceptance	\$3.03 per linear millimetre
Insurance policy reimbursement	reimbursement for the cost of the policy
Living away from home allowance	\$51.68 per day or part thereof
Living away from home - accommodation and meals reimbursement	reimbursement for the cost of accommodation and meals
Loss of personal effects reimbursement	reimbursement for the cost of personal effects lost with a maximum payment of \$2,420.00
Medical examination reimbursement - at employer's request	reimbursement for the cost of attending the examination
Medical examination reimbursement - required by legislation	reimbursement for all costs associated with the examination
Non-destructive testing allowance	\$54.79 per day or part thereof
Wetsuit and safety footwear allowance - full-time	\$108.61 per calendar month
Wetsuit and safety footwear allowance - casual	\$8.75 per day
Inshore divers	
Annual medical exam reimbursement	reimbursement for the cost of an annual medical examination
Diving allowance	\$4.05 per metre or \$1.22 per foot, or equivalent pressure per day
Diving allowance - diving supervisors	20% of the average diving allowance paid to divers under supervision

Allowances	Rate
Fares allowance - commences and finishes work within a 50 km radius of the General Post Office in the city or town in which the employer's business address is situated	\$11.63 per day and reimbursement for the cost of fares for all travel beyond the 50km boundary
Travelling time allowance - commences and finishes work beyond a 50 km radius of the General Post Office in the city or town in which the employer's business address is situated - not distant work	Payment at the minimum hourly rate for all time spent travelling beyond the 50km boundary
Travelling time allowance - Monday to Saturday - distant work - sleeping berth provided	Payment at the minimum hourly rate with a maximum payment of 12 hours out of every 24 hours
Travelling time allowance - Monday to Saturday - distant work - sleeping berth not provided	Payment at the minimum hourly rate with a maximum payment of 8 hours out of every 24 hours
Travelling time allowance - Sundays and public holidays - distant work - sleeping berth provided	Payment at the minimum hourly rate + 50% with a maximum payment of 12 hours out of every 24 hours
Travelling time allowance - Sundays and public holidays - distant work - sleeping berth not provided	Payment at the minimum hourly rate + 50% with a maximum payment of 8 hours out of every 24 hours
Travelling expenses - distant work	\$6.37 to cover expenses of reaching home and transporting personal diving equipment
Accommodation allowance - distant work	\$47.63 per day up to a maximum of \$333.09 per week
Vehicle allowance - distant work	\$0.78 per km
Diving clothing and equipment allowance	\$7.08 each day the equipment is used
Hyperbaric welding allowance - nominated hyperbaric welding team - weld accepted by client	\$4.61 per linear millimetre.
Hyperbaric welding allowance - nominated hyperbaric welding team - requires repair prior to client acceptance	\$3.10 per linear millimetre
Meal allowance	\$8.53 for a meal
Non-destructive testing allowance	\$61.25 per day or part thereof
Protective clothing and safety equipment reimbursement	reimbursement for the cost of all protective clothing and safety equipment
Safety footwear allowance - full-time	reimbursement for the cost of footwear
Safety footwear allowance - casual	\$2.53 per day

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Pay Guide - Professional Diving Industry (Industrial) Award 2010

[MA000108]

Published 29 June 2016

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ADS operations - operator	\$1,642.00	\$43.21
Diver's attendant	\$1,408.16	\$37.06

Inshore divers - Full-time

Classification	Weekly pay rate	Hourly pay rate	Overtime - Monday to Saturday - first 2 hours	Overtime - Monday to Saturday - after 2 hours	Overtime - Sunday	Public holiday
Diving supervisor	\$1,268.40	\$33.38	\$50.07	\$66.76	\$66.76	\$83.45
Hyperbaric welder	\$984.10	\$25.90	\$38.85	\$51.80	\$51.80	\$64.75
Diver	\$940.90	\$24.76	\$37.14	\$49.52	\$49.52	\$61.90
Diver's attendant	\$773.60	\$20.36	\$30.54	\$40.72	\$40.72	\$50.90

Offshore divers - Casual

Classification	Hourly pay rate
Diving superintendent	\$34.01
Diving supervisor	\$31.79
ADS operations - supervisor	\$31.79
Hyperbaric welder	\$30.68
Life support technician	\$29.09
OMB operations - senior operator	\$29.09
Systems maintenance technician	\$27.24
Diver	\$25.60
ADS operations - operator	\$25.60
Diver's attendant	\$22.28

Inshore divers - Casual

Classification	Hourly pay rate	Overtime - Monday to Saturday - first 2 hours	Overtime - Monday to Saturday - after 2 hours	Overtime - Sunday	Public holiday
Diving supervisor	\$41.73	\$62.60	\$83.46	\$83.46	\$104.33
Hyperbaric welder	\$32.38	\$48.57	\$64.76	\$64.76	\$80.95
Diver	\$30.95	\$46.43	\$61.90	\$61.90	\$77.38
Diver's attendant	\$25.45	\$38.18	\$50.90	\$50.90	\$63.63

Allowances

Allowances	Rate
Offshore divers	
Clothing and equipment reimbursement	reimbursement for the cost of the clothing and equipment
Disability allowance - full-time	\$62.26 per on-duty day on a support vessel
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Inshore divers	
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Diving allowance - diving supervisors	20% of the average diving allowance paid to divers under supervision

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Travelling time allowance - Sundays and public holidays - distant work - sleeping berth provided	Payment at the minimum hourly rate + 50% with a maximum payment of 12 hours out of every 24 hours
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Meal allowance	\$8.53 for a meal
Non-destructive testing allowance	\$61.25 per day or part thereof
Protective clothing and safety equipment reimbursement	reimbursement for the cost of all protective clothing and safety equipment
Safety footwear allowance - full-time	reimbursement for the cost of footwear
Safety footwear allowance - casual	\$2.53 per day

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IN THE AUSTRALIAN CONCILIATION AND ARBITRATION
COMMISSION

In the matter of the *Conciliation and Arbitration Act* 1904-1973

and of

THE PROFESSIONAL DIVERS ASSOCIATION OF AUSTRALIA

Claimant

v

AQUARIUS UNDERWATER SERVICES AND OTHERS

Respondents

(C No. 2330 of 1972)

and of

THE PROFESSIONAL DIVERS ASSOCIATION OF AUSTRALIA

Claimant

v

LEIGHTON CONTRACTORS PTY LTD AND OTHERS

Respondents

(C No. 2452 of 1972)

and of

THE PROFESSIONAL DIVERS ASSOCIATION OF AUSTRALIA

Claimant

v

SUB-SEA SERVICES AND OTHERS

Respondents

(C No. 1169 of 1973)

Industrial disputes—Wages and working conditions in the diving industry in Australia and its Territories—Award made.

On 23 May 1973 the Commonwealth Conciliation and Arbitration Commission (Mr Commissioner Portus) issued a decision⁽¹⁾ in connection with disputes C Nos 2330 and 2452 of 1972.

1973.
MELBOURNE,
June 19, 20, 21;
July 3, 4, 13.

The disputes came on for further hearing before the Commission (Mr Commissioner Portus) in Melbourne on 19 June 1973.

Commr
Portus

On 3 July 1973 dispute C No. 1169 of 1973 was joined to proceedings and the hearing continued accordingly.

Aug. 21.
1974.
March 29.

On 13 July 1973 the Commission issued the following decision and made the award hereinafter appearing:

Aird J.
Coldham J.
Chambers D.P.

In this matter a Commonwealth award of general application to divers is sought for the first time. In a decision given on 25 May last dealing with section 4i (l) (d) arguments the existing State coverage of divers was referred to and also the existing

(¹) 149 C.A.R. 433

AWARD—PROFESSIONAL DIVERS' (INTERIM)

[Commr Portus

Commonwealth award covering divers carrying out underwater services associated with the offshore hydrocarbon industry.

As it is desirable to issue an award in this area and as it is not possible immediately to have a full-scale arbitration conferences have taken place with the aim of making a short-term interim award to operate for a period of two months until the matter can be fully arbitrated at a later date. Agreement was reached with regard to the terms of such an award except for wage rates and certain other matters. The parties agree that the award should be in three parts. Part I applies to the offshore hydrocarbon industry, Part II applies to diving in other than the offshore hydrocarbon industry and Part III is of general application. The matters for decision are contract of employment in Part I, Part I wage rates, Part II definitions and wage rates and lastly the application of the award and preference for unionists.

Contract of Employment in Part I. Mr Button for the union seeks a clause in the following form 'Employment for the first month shall be on a weekly basis and thereafter shall be on a monthly basis'. Mr Gillespie for the employers concerned in Part 1 asks that the clause be the same as in the A.W.U. Oil Drilling Divers Award, 1971 ⁽¹⁾, namely weekly employment for the first three months. Mr Button claimed that a longer period of notice should be given to these divers who were required to take employment at long distances from their homes and who were specialist employees who would find more difficulty in finding employment than employees less specialised. He also drew attention to the fact that the cycle of employment was for three weeks and that salaries were expressed in monthly terms. The position is that in the 1969 award Commissioner Clarkson provided for weekly employment only for the first month. Subsequently an application was made for variation of this award because the diving contractors were only given one weeks notice by the oil rig owners concerning diving contracts. Consequently, the diving contract could be terminated and the diving contractors could be left with a liability to their divers for the remainder of the month. The application was finally not proceeded with because the 1969 award which only applied to a list of 32 divers became of very limited effect as most of these divers named left the industry. However, when the A.W.U. award was made the provision was altered. In my opinion in this interim award of short duration, the A.W.U. provision should continue. It is a difficult matter and there has been insufficient opportunity for the parties and the Commission to consider it.

Part I Wage Rates. When Commissioner Clarkson made the 1969 award he worked out appropriate weekly rates and transferred them to monthly equivalents having regard to the unusual system of working which applied to offshore oil drilling rig workers. He said:

'Employees on off-shore rigs under The Oil Drilling Rig Workers Award, 1968, work for 12 hours a day for 14 days and then have 7 days leave. In my view it is reasonable to equate the divers availability for 24 hours per day, taking into account also the other factors I have mentioned above, with the actual working times of other rig workers.

The labourers and other employees under the abovementioned award working on the rig are paid 235½ equivalent hours for the 21 day work cycle and are also paid a shift premium of a \$1 a shift for 13 of the 14 days.

Having decided to use the Oil Drilling Rig Workers Award, 1968, as a bench mark, I have fixed nominal weekly rates for employees under the Divers Award as set out below and have used the following formula to convert those nominal weekly rates to monthly rates:

$$M = 4W + \left(\frac{W}{40} \times \frac{235\frac{1}{2}}{21} \times \frac{337}{1} \right) + \left(\frac{S}{21} \times \frac{337}{1} \right)$$

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which may be reduced to $M = 8.2067W + 1.3373S$.

where M = the average monthly earnings.

W = nominal weekly rate for 40 hours.

S = the shift premium for the 21 day cycle (\$13 at present).

The figure 337 is obtained by deducting 28 days from 365. The $4W$ is four weeks annual leave'.

Both parties agree that a monthly rate should be fixed and both parties agree that the classifications should be diving attendant, air-diver, helium diver and supervising diver.

The respective equivalent classifications in the 1969 award and the A.W.U. Award are regarded as tender, class 4 diver thereafter, class 3 diver and class 1 diver. The appropriate monthly rates suggested by the Association are respectively \$637, \$943, \$1056 and \$1,409. The rates suggested by the employers are those payable under the A.W.U. Divers Award. These are \$496, \$736, \$827 and \$1,118.

My approach to this matter is to fix a weekly rate for the diving attendant of \$68. This is the rate suggested by the Association but I do not accept that double pay annual leave should be taken into account. The parties have agreed on the amount of annual leave. Applying the formula which has just been mentioned and having regard to the fact that oil drilling rig workers are now paid 248 equivalent hours for the 21 day work cycle and not $235\frac{1}{2}$ and are paid a shift premium of \$2.10 per shift for 10 days the monthly rate for the diving attendant works out at \$615 per month.

In the case of the air diver and the helium diver I accept the same percentage differentials which at present exist and which both parties accept in the calculations. This works out at a weekly rate of \$100 per week for the air diver and \$112 per week for the helium diver. The monthly rates are \$891 and \$994 respectively. However, I have fixed a lower rate for the supervising diver. If the parties had not agreed I would not have inserted this classification in the interim award. It is a new classification with a rate considerably higher than other classifications and I have had no submissions concerning these employees. In these circumstances I think the fixation in an interim award should be very conservative. I fix a monthly rate of \$1,250.

Part II Wage Rates. The rates to be fixed are for the classifications, diver and diving attendant. Extra rates have been agreed for leading hand divers depending upon the number of employees within his charge. Mr Button submitted that I should be guided by the going rates for divers as indicated in the evidence of certain of his witnesses. Mr Lewis and Mr Hooper for the employers concerned objected to this approach. They disputed that the tribunal had any picture of the going rate in the industry in circumstances in which the employers had not yet an opportunity of presenting a case. They went on to suggest that it was desirable that a rate should be fixed for an employee only when diving and not on the basis of a contractual engagement as a diver. Alternatively, they suggested that a rate should be fixed for an employee engaged as a diver which would take into account the skill of a diver with additional rates awarded for days on which diving was done. These additional rates would be based on the disabilities of diving. These are matters which obviously cannot be finally decided at this stage. At present I consider it best to be guided by the system which applies on offshore oil drilling work namely the fixation of a rate for an employee whose contractual engagement is in a particular capacity. The rates which I fix are the equivalent weekly rates applying in offshore oil drilling work namely \$68 per week for the diving attendant and \$100 for the diver. It follows from what I have said that the other matter in issue namely the definition of a diver should be decided on the basis that a diver means an employee required to perform underwater services and not an employee performing such services.

Application of Award to all Employees and Preference for Unionists. The union claims that the award should apply in respect of all employees and not only to members of the

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Professional Divers Association. The employers contend that in Part I of the award the application should only be in respect of members of the union.

The Union also claims that a detailed preference clause should be inserted which can be briefly described as a preference clause on the lines of the clause approved by the Full Commission in the Clerks Oil Industry dispute. By the service of a log of claims on the employers the Association recently created dispute C No. 1169 of 1973 on this issue. The employers to both Part I and Part II oppose such a clause in this interim award but they are prepared to concede a simple preference clause.

It is relevant to consider the position of the Australian Workers Union (A.W.U.). Matters 2330 and 2452 of 1972 were originally listed with matter C No. 2746 of 1972 which was an application to vary the A.W.U. Oil Drilling Divers Award 1971. In the original proceedings the A.W.U. submitted that matters C No. 2330 and 2452 of 1972 should be dismissed as the A.W.U. could adequately represent the interest of all divers. This submission was not upheld in a decision given by me on 23 May last. Subsequently on 13 June a letter was received from the General Secretary of the A.W.U. seeking leave to withdraw application C No. 2746 of 1972 and advising that they would not participate in the further hearings of the diving matters which at that stage had been re-listed.

In these circumstances I take the view that this award should be made applicable to all employees. It is an interim award for only two months and if the A.W.U. subsequently decide to seek a variation of their 1971 award the position can be reconsidered. For the same reason I consider that the preference clause should be put in the interim award giving preference in engagement to members of the Professional Divers Association, other things being equal. I am not however prepared to grant any more detailed preference clause. Both the employers and the Commission have not had time to consider how far the clause sought is appropriate to this industry and, if it is, the particular provisions to be inserted. Also at this stage I do not consider that any divers members of the A.W.U. should be prejudiced in obtaining employment in the area covered by Part I of the award. Accordingly I will provide in the preference clause that this clause in that area shall not apply to give preference to a member of the Professional Divers Association over a member of the A.W.U.

Date of Operation. I grant the employers request that a short period of prospective operation of the award be fixed. The award will come into operation as from the commencement of the first pay period after 20 July and shall remain in force for a period of two months.

Award order and prescribe:

Save and except those clauses which contain references to the matters which are in section 31 of the above-mentioned Act.

1—TITLE

This award shall be known as the Professional Divers' (Interim) Award, 1973.

1A—ARRANGEMENT

Clause Number	Subject
1	Title
1A	Arrangement
2	Parties Bound Area and Incidence
3	Date of Operation and Duration
Part I	
1	Application
2	Contract of Employment
3	Definitions
4	Wage Rates
5	Insurance and Accident Pay
6	Safety Standards and Safe Working Practices
7	Periods of Duty

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8	Crew Changes—Offshore Employees
9	Transportation
10	Sick leave
11	Annual Leave
12	..	..	..	..	..	Public Holidays
13	..	..	..	..	..	Diving Clothing and Equipment
Part II						
1	..	..	..	..	..	Application of Part II
2	..	..	..	..	..	Definitions
3	..	..	..	..	..	Contract of Employment
4	..	..	..	..	..	Wages
5	..	..	..	..	..	Hours
6	..	..	..	..	..	Overtime
7	..	..	..	..	..	Special Overtime
8	..	..	..	..	..	Fares and Travelling Time
9	..	..	..	..	..	Distant Work
10	..	..	..	..	..	Public Holidays
11	..	..	..	..	..	Annual Leave
12	..	..	..	..	..	Sick Leave
13	..	..	..	..	..	Accident Pay
14	..	..	..	..	..	Safety Standards and Safe Working Practices
15	..	..	..	..	..	Meal Breaks and Meal Allowances
16	..	..	..	..	..	Attendance Money
17	..	..	..	..	..	Payment of Wages
Part III						
1	..	..	..	..	..	Application of Part III
2	..	..	..	..	..	Grievance Procedure
3	..	..	..	..	..	Boards of Reference
						1. General Boards of Reference
						2. Special Boards of Reference
4	..	..	..	..	..	Right of Entry
5	..	..	..	..	..	Union Representative
6	..	..	..	..	..	Posting of Award
7	..	..	..	..	..	Bereavement Leave
8	..	..	..	..	..	Preference of Employment
9	..	..	..	..	..	Savings
						Respondents

2—PARTIES BOUND AREA AND INCIDENCE

This award shall be binding upon the Professional Divers' Association of Australasia and its members and upon the employers named in the schedule hereto as to the employment by them of all employees whether members of the Association or not who are engaged in or in connection with diving in the provision of underwater services in areas within the Commonwealth of Australia or within the adjacent areas as defined in the Petroleum (Submerged Lands) Acts, Commonwealth or State as the case may be.

3—DATE OF OPERATION AND DURATION

This award shall come into operation as from the commencement of the first pay period after 20 July 1973 and shall remain in force for a period of two months.

PART I

1—APPLICATION

Part I of this award shall apply to the employment in or in connection with the performance of underwater services associated with all diving from oil drilling rigs, hydrocarbon exploration vessels or platforms, and diving in or in connection with the construction and maintenance of platforms and associated submarine pipelines.

2—CONTRACT OF EMPLOYMENT

(a) Employment for the first three months shall be on a weekly basis and thereafter shall be on a monthly basis.

(b) Employment may be terminated by either side by giving a week's notice or a month's notice as the case may be. Notice may be given at any time during the week or the month, but the day on which the notice is given shall not count as part of the notice. An employer may dismiss'

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an employee without notice for inefficiency, neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only, and may deduct payment for any day the employee cannot be usefully employed because of any strike.

Where an employee has given notice as aforesaid he shall continue in his employment until the date of the expiration of such notice. Any employee who having given or who has been given notice as aforesaid without reasonable excuse (proof of which shall be on him) absents himself from work during such period shall be deemed to have abandoned his employment and shall not be entitled to payment for work done by him within that period.

(c) An employee shall perform such work as his employer shall from time to time reasonably require.

3—DEFINITIONS

Diving Supervisor shall mean an employee appointed by the Employer to supervise Diving Operations, to instruct other Divers and to be responsible for safe diving practices. He shall also be competent and required to carry out all classes of hydrocarbon exploration and development diving including using helium/oxygen or similar mixtures, using submarine observation bells, and operating from submarine work chambers and to be a dive controller using the said techniques.

Helium Diver shall mean a diver who is competent and required to dive and/or control a dive on helium/oxygen or similar mixtures, including using submarine observation bells and/or operating from a submarine work chamber on all classes of hydrocarbon exploration and development diving.

Air Diver shall mean a diver who is competent and required to dive and/or control a dive on all classes of hydrocarbon exploration and development diving using air as a breathing medium.

To enable him to qualify as a helium diver, an air diver shall be required to make dives using helium/oxygen or similar mixtures provided such dives are made under the direct supervision of a diving supervisor, and provided further that this provision shall not apply to employees who regularly dive using helium/oxygen or similar mixtures but are not required to use submarine observation bells and/or operate from submarine work chambers.

Diving Attendant shall mean any person carrying out the function of attending a diver including assisting him to dress and undress, handling hoses and/or life lines and such other duties as may be assigned to him by the Diving Supervisor or dive controller.

To enable him to qualify as an air diver, a diving attendant shall be required to make surface oriented dives using air as a breathing medium provided such dives are made under the direct supervision of a diving supervisor.

Inspector wherever used in this award shall mean an Inspector appointed under the *Conciliation and Arbitration Act 1904-1972* or any Inspector appointed under any of the *Petroleum (Submerged Lands) Acts* of the Commonwealth or the State.

Designated Authority or *Designated Authorities* shall mean any Designated Authority appointed under the *Petroleum (Submerged Lands) Acts*.

Petroleum (Submerged Lands) Acts shall mean and include the Commonwealth or State Acts or any of them as the case may require in force from time to time having the short title *Petroleum (Submerged Lands) Acts*.

4—WAGE RATES

(a) Employees parties to the award shall be paid the amounts set out hereunder according to the class of work performed.

<i>Classification</i>	<i>Monthly rate</i>
	\$
Diving Supervisor	1,250
Helium Diver	994
Air Diver	891
Diving Attendant/Trainee Diver	615

(b) Any dispute as to the appropriate classification of an employee for the work on which he is engaged shall be referred to the special Board of Reference constituted under this award.

5—INSURANCE AND ACCIDENT PAY

(a) The Company shall obtain and keep current an insurance policy covering any employee not otherwise covered by the Workers' Compensation laws of the State or Territory in which the

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said employee is assigned to work, or adjacent to the area in which the said employee is assigned to work. Such cover shall provide benefits at least equal to the benefits prescribed by the aforesaid laws and without limiting the generality of the foregoing in particular shall provide benefits as to medical and like expenses, weekly or other periodical payments, or lump sum payments at least equal to the benefits prescribed by the aforesaid laws. The phrase 'adjacent to the area' shall have same meaning mutatis mutandis as the phrase 'the adjacent areas as defined in the Petroleum (Submerged Lands) Act 1967'.

(b) *Accident Pay*

- (i) An employer shall pay an employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the employer pursuant to the provisions of the appropriate workers' compensation act.
- (ii) 'Accident Pay' means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the said appropriate workers' compensation act and the employee's appropriate ordinary award rate, or where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.
- (iii) An employer shall pay, or cause to be paid, accident pay during the incapacity of the employee which extends beyond five days from the date of injury within the meaning of the said appropriate act until such incapacity ceases, or until the expiration of a period of 26 weeks from the date of injury, whichever event shall first occur.
- (iv) The liability of the employer to pay accident pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable under the said appropriate act, and the termination of the employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the employer to pay accident pay as provided in this clause.
- (v) In the event that the employee receives a lump sum in redemption of weekly payments under the said act, the liability of the employer to pay accident pay as herein provided shall cease from the date of such redemption.

6—SAFETY STANDARDS AND SAFE WORKING PRACTICES

(a) No employee bound by this award shall be permitted to perform underwater services unless he has completed six months employment as a diving attendant or can produce satisfactory documented evidence of diving experience qualifying him for the work to be performed.

(b) The minimum crew strengths for various types of diving operations shall be as follows:

- (i) Where self-contained underwater breathing apparatus is used without a life line there shall be two divers in the water at all times. Where necessary there shall also be in the immediate vicinity of the diving operation a power boat which shall be equipped with radio communication facilities. The boat shall be manned by at least one person competent in rescue methods.
- (ii) Where self-contained underwater breathing apparatus is used with a life line there shall be one diver in the water, one stand-by diver, and where necessary, in the immediate vicinity of the diving operation a power boat manned by a person competent in rescue methods, which boat shall be equipped with radio communication facilities.
- (iii) Where ram mask equipment with diver controlled air is used there shall be one diver, one stand-by diver and one tender.
- (iv) Where standard dress with diver controlled air is used there shall be one dive controller, one diver, one stand-by diver in ram mask equipment and one tender, or alternatively, one dive controller, one diver, one stand-by diver in standard dress and one tender.
- (v) Where a ram mask is used with air controlled at the surface by a manifold there shall be one dive controller, one stand-by and one tender.
- (vi) Where standard dress is used with either helium and oxygen mixtures or air controlled by a manifold at the surface there shall be one dive controller, one diver, one stand-by diver and one tender.
- (vii) Where submarine observation bells are used and the diver is not under pressure there shall be one dive controller, one diver in the bell, one winch operator who shall be a competent diver where the winch is operated from a station separate from the control panel, and one tender.
- (viii) Where a submarine work chamber is used there shall be one dive controller, two

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divers in the chamber (one the working diver and the other the stand-by diver), one winch operator where the winch is operated from a station separate from the control panel and one tender.

- (ix) In all of the foregoing instances where the diving superintendent, or the person acting as dive controller as the case may be, considers the circumstances warrant, he shall request further assistance either before commencing the dive or at any time during the dive. Provided that the tenders may be qualified divers or other persons who have been instructed in and are competent to perform tenders' duties.

(c) The diving supervisor or the dive controller as the case may be, shall ensure that records in a form approved by the appropriate Designated Authority shall be kept for each and every dive. If the appropriate Designated Authority has not approved any forms then a record shall be kept in accordance with the requirements of Appendix 'J' of the Standards Association of Australia Compressed Air Code A.S.C.: 12-48 (or any code replacing the said code), together with any other information concerning the dive required to be recorded by the United States Navy Diving Manual.

(d) (i) A person shall not carry out a dive in any of the areas in which this award operates unless within the previous six months he has been examined and reported on as fit to dive by a registered medical practitioner. The medical examination shall include but not be limited to—

(a) The requirements set out in Appendix 'A' of the Standards Association of Australia Compressed Air Code A.S.C.: 12-48.

(b) A chest X-ray.

(c) An audiogram.

(d) A check for evidence of cranial surgery.

(e) A check for the fitting of dentures (if any).

(f) A long bone X-ray.

(ii) Further medical examinations to the above standard shall be carried out at intervals not exceeding six months, provided that the chest X-ray and audiogram need only be done at twelve monthly intervals.

(iii) The registered medical practitioner's report on the examination and the examinee's fitness for diving shall be shown to the employer and kept by the diver with his personal log book, and shall be readily available at all reasonable times for perusal by an inspector.

(iv) Each diver shall keep a personal log book showing:

(a) Date of each dive.

(b) Equipment and breathing medium used.

(c) Bottom time.

(d) Depth.

(e) Reason for dive.

(f) Decompression carried out.

Such log book shall be readily available at all reasonable times for perusal by an Inspector. Each entry shall be certified by a duly authorised representative of the relevant Company.

(e) A diver when using compressed air for breathing shall not carry out any physical work at a depth greater than 180 feet provided that a diver using compressed air may make a dive to 200 feet for observation purposes only. A recompression chamber shall at all times be available and ready for immediate use at all locations where diving operations are to be carried out in depths greater than 60 feet. Diving operations in depths greater than 260 feet shall be carried out from submarine work chambers of a type approved by any one of the Designated Authorities under the *Petroleum (Submerged Lands) Acts*.

Medical first-aid facilities to the standard set by any one of the Designated Authorities under the *Petroleum (Submerged Lands) Acts* shall be available at all times when diving operations are being carried out.

(f) (i) No diving operations in which an air compressor is used to supply the breathing medium for the divers shall be commenced until—

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- (a) There is available a stand-by compressor connected into the air supply system both to the diver and the compression chamber, or
- (b) there is an emergency supply of compressed air in pressurised cylinders containing sufficient air to supply the diver during his ascent to the surface and to supply the recompression chamber.

The quantity of air in the cylinders shall be sufficient to supply an initial recompression and at least one further emergency recompression in accordance with standard recompression tables. The emergency supply shall be connected to the air supply system to the diver and to the recompression chamber.

- (ii) All air and other gases supplied to a diver shall be free of mineral oil and other deleterious impurities.
- (g) Any system for the supply and surface control of a breathing medium for divers shall include but not be limited to—
- (i) A depth gauge to read the depth of the diver calibrated in feet of salt water.
 - (ii) A pressure gauge to indicate the pressure at the surface in the breathing medium system.
 - (iii) A regulating valve or valves to control the pressure of mixtures of the helium and oxygen when such mixtures are used as the breathing medium.
 - (iv) The pressure gauges and regulating valve or valves shall be mounted at a manifold or at the quads which shall be operated by the dive controller. The manifold shall be provided with adequate illumination at all times.
 - (v) All gauges measuring depth or pressure referred to herein or otherwise used in diving operations shall be checked at intervals not exceeding one month by means of a suitable master gauge. The master gauge shall be calibrated by a testing authority registered by the National Association of Testing Authorities for such calibration at intervals not exceeding one year and a test certificate obtained. The test certificate issued by the testing authority shall be available for inspection at all reasonable times by an Inspector. The master gauge shall not be used for any purpose other than the checking of gauges used in diving. If any gauge used in diving when checked against a master gauge is found to be in error by more than 2½ per cent of the maximum reading of the gauge, it shall be immediately replaced by a gauge which complies with this requirement.
- (h) The dive controller shall:
- (i) Instruct the members of the diving team prior to the diver entering the water on the purpose of the dive and how to achieve the purpose, so that each member of the team knows his function and the functions of the other members of the team.
 - (ii) Be responsible for the conduct of the dive and all personnel in the diving team shall obey his commands.
 - (iii) Be competent to set up and use the facilities and equipment to be used in the dive and have dived using the said equipment to the depth to which the diver will proceed. Provided that a diver may act as dive controller under the instruction of a diving superintendent to achieve competency.
 - (iv) Ensure that the equipment being used in the dive is safe and working properly and has been inspected at the required intervals.
- (i) (i) All wire ropes used for raising or lowering divers whether on a stage or in submarine observation bells or submarine work chambers shall be inspected for corrosion and wear throughout their length at least once every three months. A log book showing dates of inspection and of any repairs, alterations or substitutions of wire ropes, splicers, shackles or clamps shall be kept by the superintendent. A safety rope (of nylon or similar suitable material) shall be attached to every submarine observation bell or submarine work chamber and such safety rope shall be capable of supporting and raising the submarine work chamber in the event of failure of the primary wire rope or hoisting mechanism. All wire ropes used for raising or lowering as aforesaid shall have a safe working load of at least twice the weight to be raised or lowered. All wire ropes used for raising or lowering divers or bells shall comply with Australian Standard B187:1968 and shall be lubricated so as to comply with Australian Standard MBI-1968 Part 10 (or any standards replacing the said standards).
- (ii) All air hoses shall be inspected weekly and tested either hydrostatically or by a 100% air overload each six months. A log book of inspections and tests shall be kept. An identification tag shall be attached to each hose at or near the surface end of the hose.

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(iii) All suits, masks and other diving equipment used by a diver shall be inspected weekly and a record kept of such inspection in a log book. All suits and masks shall be numbered for identification and record purposes. The log book may be the same log book as records the hose inspections.

(j) No diver shall operate at night without a life line.

(k) The foregoing provisions of this clause shall be superseded by the provisions of any regulations as to safety standards and safe working practice as administered by the designated authority under the Petroleum (Submerged Lands) Act in respect of the adjacent area as defined in such Act in which the employer is operating. The obligation to comply with such regulations shall apply whether or not the employer is a permittee or licensee under the said Act, and any failure to so comply shall be a breach of this award.

7—PERIODS OF DUTY

(a) Offshore on rigs or platforms (excluding employees onshore on three-hour call)—a cycle of duty for any employee assigned to work on a rig or platform shall be two consecutive weeks on the rig and one week of leave on shore. By agreement between the Company and any group of divers these times may be varied provided the same ratio is maintained.

(b) Onshore on three-hour call—employees may be based onshore and shall perform such duties as may be allocated to them. They shall be available on call at three hours notice between the hours of sunrise and sunset each day for such periods as may be arranged by mutual agreement.

8—CREW CHANGE—OFFSHORE EMPLOYEES

For the purpose of changing crews an employer shall supply transport between the rig and the shore and between the shore base and the recognised assembly point where public transport is readily available.

9—TRANSPORTATION

When an employee has completed his cycle in accordance with clause 7 (a) hereof he shall be provided with return transportation to the nearest town or centre of population where normal amenities are reasonably available.

10—SICK LEAVE

(a) After four weeks service an employee who is absent from work on account of personal illness or on account of injury by accident, for which he is not entitled to workers compensation, shall, on production within 48 hours of the commencement of such absence, of evidence of his illness or injury, satisfactory to his employer, be entitled to leave of absence on the prescribed rate of pay for a period of, in the case of a diver, including a diving attendant who is diving, two weeks and in the case of a tender one week of working time in any one year of service.

(b) Such sick leave shall accumulate from year to year so that any balance of the period specified in sub-clause (a) hereof up to one week which has not been allowed to an employee by his employer as paid sick leave may be claimed by the employee and, subject to the conditions herein prescribed, shall be allowed by his employer in any subsequent year without diminution of the sick leave prescribed in respect of that year.

Provided that no employee shall be entitled to receive and no employer shall be bound to make payment for more than eight weeks absence from work through illness in any one year.

(c) In the event of a diver suffering disability entitling him to workers compensation payments the employer shall for the first four weeks of such period of disability pay the difference between his weekly wage entitlement and the amount of workers compensation payments.

(d) In the event of a diver suffering any serious illness or injury resulting in inability to perform any work in circumstances in which workers compensation was not payable he shall be given an extra two weeks sick leave with the employer having the right to have him medically examined and approved for sick leave by a doctor nominated by the employer.

The provision for four weeks sick leave is to cover a situation of disabling illness in one year.

11—ANNUAL LEAVE

(a) A period of 28 consecutive days leave, including non-working days, shall be allowed annually to an employee after 12 months continuous service in any one or more of the occupations to which this part applies.

(b) Subject to this sub-clause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by clause 12 of this part, and if any such holidays fall within

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an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him, to attend for work at his ordinary starting time on the working day immediately following the last day of his period of annual leave, he shall not be entitled to be paid for any such holiday.

(c) The annual leave shall be given and taken in a continuous period, or if the employee and the employer so agree, in two separate periods. It shall be given and taken within six months of falling due.

(d) An employee to whom sub-clause (a) of this clause applies shall, before going on leave, be paid the wages he would otherwise have been paid pursuant to clause 4 had he not been absent.

(e) If an employee:

(i) after one month's continuous service in his first qualifying 12-monthly period with an employer, lawfully leaves the employment of the employer or his employment is terminated by the employer through no fault of the employee,

or

(ii) after 12 months continuous service with an employer leaves his employment or his employment is terminated by the employer,

he shall be paid pro-rata to his period of service at the rate prescribed by clause 4 hereof.

12—PUBLIC HOLIDAYS

(a) Except as hereinafter provided, employees shall be entitled to the following public holidays without loss of pay:

New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Christmas Day, Boxing Day, or such other day as is generally observed in the locality as a substitute for any of the said days respectively.

Provided, however, that in Western Australia and its adjacent areas Foundation Day shall be observed as a holiday in lieu of Easter Saturday.

Provided further that in South Australia and its adjacent areas Commemoration Day (28 December) shall be observed as a holiday in substitution of Boxing Day.

Provided further that in Victoria and its adjacent areas Melbourne Cup Day shall be observed as a holiday in substitution of Easter Saturday.

By agreement between an employer and the majority of his employees in a particular work place, other days may be substituted for the said days or any of them.

(b) Where an employee is absent from his employment on the working day before or the working day after a public holiday prescribed in sub-clause (a) hereof without reasonable excuse, or without the consent of his employer, the employee shall not be entitled to payment for such holiday or holidays.

(c) Where an employee works on any of the public holidays prescribed in this clause he shall have a day in lieu added to his annual leave.

13—DIVING CLOTHING AND EQUIPMENT

(a) The employer shall supply all diving equipment and ensure that it is maintained in a serviceable condition.

(b) Employees who supply their own wetsuits and personal diving gear including weight belt and diving knife, shall be paid an allowance of \$10.00 per month.

PART II

1—APPLICATION OF PART II

This Part shall apply to the employment of persons within the scope of this award in or in connection with diving in the provision of underwater services other than those covered by Part I. Also it shall not apply to employees engaged for other purposes than diving but who are required to dive as an ancillary activity.

2—DEFINITIONS

Leading Hand Diver means an employee appointed by the employer to be in charge of other employees.

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Diver shall mean an employee required to perform underwater services.

Diving Attendant shall mean any person carrying out the function of attending a diver including assisting him to dress and undress, handling hoses, and/or life lines and such other duties as may be assigned to him by the employer.

Casual Employee shall mean an employee engaged and paid as such.

Inspector wherever used in this Part shall mean an Inspector appointed under the *Conciliation and Arbitration Act 1904-1972*.

3—CONTRACT OF EMPLOYMENT

(a) *Weekly Employment*

(i) All employees except casual employees shall be employed by the week.

(ii) Employment shall be terminated by a week's notice, on either side, given at any time during the week or by the payment or forfeiture of a week's wages, as the case may be. This shall not affect the right of the employer to dismiss any employee without notice for malingering, inefficiency, neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only or to deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

Where an employee has given or has been given notice, as aforesaid, he shall continue in his employment until the date of the expiration of such notice. Any employee, who having given or having been given notice, as aforesaid, without reasonable cause (proof of which shall lie on him) absents himself from work during such period shall be deemed to have abandoned his employment and shall not be entitled to payment for work done by him within that period.

(b) *Casual Employment*

Casual employment shall be terminated by an hour's notice, on either side, or by the payment or forfeiture of an hour's wages as the case may be.

4—WAGES

(a) Weekly employees shall be paid the amounts set out hereunder:

Diver	\$100 per week
Diving Attendant	\$ 68 per week

(b) A leading hand diver shall be paid the following amounts extra:

(i) In charge of more than two and up to and including five employees—
\$4.70 per week.

(ii) In charge of more than five and up to and including ten employees—
\$6.00 per week.

(iii) In charge of more than ten employees—
\$8.40 per week.

(c) A casual employee shall be paid the rate prescribed for the work that he performs plus 15 per cent.

(d) Any dispute as to the appropriate classification of any employee for the work on which he is engaged shall be referred to the Special Board of Reference constituted under this award.

5—HOURS

(a) *Divers*

The ordinary working hours of a diver shall not exceed six hours thirty-six minutes per day, Monday to Friday, both days inclusive. Where a diver is not employed as such during the full six hours thirty-six minutes in any one day the employer shall have the right to use his services on other work for any time remaining.

(b) *Diving Attendants*

The ordinary working hours of a diving attendant shall not exceed eight hours per day, Monday to Friday, both days inclusive.

6—OVERTIME

(i) All time worked in excess of the hours prescribed by clause 5, Hours, of this Part, shall be paid at the rate of time and a half for the first three hours and double time thereafter. In calculating overtime each day's work shall stand alone.

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- (ii) All time worked on a Sunday shall be paid for at double time.
- (iii) Employees who work on a Saturday or Sunday shall be paid for a minimum of four hours work.

7—SPECIAL ALLOWANCES

Employees who supply their own wet suits and personal diving gear including weight belt and diving knife shall be paid in addition to the ordinary rate an allowance of \$1 per day on each day on which a dive is performed.

8—FARES AND TRAVELLING TIME

An employee who is required to commence and finish work away from his employer's workshop or depot shall be reimbursed for excess fares and travelling time on the following basis.

- (i) An allowance of \$1.00 per day to compensate for excess fares to and from places of work provided that:
 - (a) The above stated allowance shall not be payable if the employer provides or offers to provide transport from the employee's home to the job and return, free of charge to the employee. The employee's home for this purpose shall include a place where an employee camps or where he is temporarily living.
 - (b) Subject to the foregoing provisions a fare shall be deemed to have been incurred if the employee has used a bicycle or other means of locomotion or has walked instead of using a public conveyance.
- (ii) An allowance of 0.6 hours pay per day to compensate for excess travelling time to and from places of work.

9—DISTANT WORK

(i) For the purpose of this clause distant work is that in respect of which the distance or the travelling facilities to and from such places of work make it reasonably necessary that the employee should live and sleep at some place other than his usual place of residence at the time of commencing such work; Provided that if the employee, whilst employed on distant work, changes his usual place of residence such new place of residence or any further change thereof (if made whilst employed on distant work) shall be the usual place of residence for determination whether the work is distant work within the meaning of this clause.

(ii) An employee engaged on distant work shall be conveyed with tools to and from at his employer's expense. Such conveyance shall be made once only unless the employee is recalled and sent again to the place of work when it shall be made each time that this happens; Provided that return fares and travelling time need not be paid to an employee who:

- (a) leaves his employment of his own free will; or
- (b) is discharged for misconduct;

before the completion of the job, before being three months in such employment, whichever first happens, or is discharged for incompetence within one week of engagement.

(iii) Time occupied in travelling to and from distant work shall be paid for at ordinary rates; Provided that no employee shall be paid more than an ordinary day's wages for any day spent in travelling unless he is on the same day occupied in working for his employer. He shall be paid also an amount of \$1.00 to cover the expenses, if any, of reaching his home and of transporting his tools.

- (iv) (a) On distant work the employer shall provide reasonable board and lodging or pay an allowance of \$40.00 per week of seven days but such allowance shall not be wages. In the case of broken parts of a week occurring at the beginning or end of a period of distant work the allowance shall be all living expenses actually and reasonably incurred but not exceeding \$40.00
- (b) Reasonable board and lodging for the purpose of this clause shall mean lodging in a well-kept establishment with adequate furnishings, good bedding, good floor coverings, good lighting and heating in either a single room or a twin room if a single room is not available, with hot and cold running water.
- (v) An employee required to use his own vehicle in the course of his employment shall be paid a mileage allowance of 12 cents per mile.

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10—PUBLIC HOLIDAYS

- (i) Weekly employees shall be entitled to the following public holidays without loss of pay:
New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day, or such other day as is generally observed in the locality as a substitute for any of the said days respectively.
- (ii) Provided that by mutual agreement between any employer and employee, any other day may be substituted.
- (iii) An employee who was absent from work on the working day preceding or the working day following the holiday or two or more consecutive holidays or on both of such working days shall not be entitled to payment for the holiday or holidays unless he produces or forwards evidence satisfactory to the employer that his absence was due to a good and satisfactory cause.
- (iv) All work done on public holidays shall be paid for at the rate of double time and a half with a minimum payment for four hours work.

11—ANNUAL LEAVE

(a) A period of 21 consecutive days leave, including non-working days, shall be allowed annually to an employee after 12 months continuous service in any one or more of the occupations to which this Part applies.

(b) Subject to this sub-clause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by clause 10 of this Part, and if any such holidays fall within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him, to attend for work at his ordinary starting time on the working day immediately following the last day of his period of annual leave, he shall not be entitled to be paid for any such holiday.

(c) The annual leave shall be given and taken in a continuous period, or if the employee and the employer so agree, in two separate periods. It shall be given and taken within six months of falling due.

(d) An employee to whom sub-clause (a) of this clause applies shall, before going on leave, be paid the wages he would otherwise have been paid pursuant to clause 4 had he not been absent.

(e) If an employee:

(i) after one month's continuous service in his first qualifying 12-monthly period with an employer, lawfully leaves the employment of the employer or his employment is terminated by the employer through no fault of the employee, or

(ii) after 12 months continuous service with an employer leaves his employment or his employment is terminated by the employer,

he shall be paid pro-rata to his period of service at the rate prescribed by clause 4 hereof.

12—SICK LEAVE

(i) An employee who, after not less than three months continuous service in his current employment, is unable to attend for duty during his ordinary working hours by reason of personal illness or personal incapacity (including incapacity resulting from injury within the *Workers Compensation Act*) not due to his own serious and wilful misconduct, shall be entitled to be paid at ordinary time rate of pay for the time of such non-attendance subject to the following:

(a) Payment in connection with sick leave is to be made on the next regular pay day after the employee reports sick and such payment shall continue on regular pay days until the employee exhausts his sick leave or resumes duty.

(b) He shall not be entitled to paid leave of absence for any period in respect of which he is entitled to workers compensation. Where a claim for workers compensation is made by an employee payment of sick leave under this clause shall not be payable in respect of the period covered by the said claim until such claim has been disposed of.

(c) He shall within twenty-four hours of the commencement of such absence inform his employer or his representative of his inability to attend for duty and, as far as possible, state the nature of the illness or incapacity and the estimated duration of the same.

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- (d) He shall prove to the satisfaction of his employer that he is or was unable on account of such illness or incapacity to attend for duty on the day or days for which payment under this clause is claimed.
- (e) Subject to the provisions of paragraph (f) of this sub-clause, he shall not be entitled in any one year of continuous employment to sick pay for more than 40 ordinary working hours. Any period of paid sick leave allowed by the employer to an employee in any such year shall be deducted from the period of sick leave which may be allowed or may be carried forward under this award in or in respect of such year.
- (f) The rights under this clause shall accumulate from year to year so long as the employment continues with the employer, so that any part of 40 hours which has not been allowed in any one year may be claimed by the employee and shall be allowed by the employer, subject to the conditions prescribed by this clause, in a subsequent year of continuous employment. Any rights which accumulated pursuant to this sub-clause shall be available to the employee for a period of four years, but for no longer, from the end of the year in which they accrued.
- (g) For the purpose of this clause 'continuous service' shall be deemed not to have been broken by
 - (a) any absence from work on leave granted by the employer; or
 - (b) any absence from work by reason of personal illness, injury or other reasonable cause (proof whereof shall in each case be upon the employee);
 Provided that any time so lost shall not be taken into account in computing the qualifying period of three months.
- (h) Service with his employer before the date of coming into force of this clause shall be counted as service for the purpose of qualifying thereunder.

13—ACCIDENT PAY

- (a) An employer shall pay and an employee shall be entitled to receive accident pay in accordance with this clause.
- (b) 'Accident pay' means a weekly payment of an amount being the difference between the weekly amount of compensation paid to an employee pursuant to the *Workers Compensation Act* of the State in which the employee is working, and the weekly award rate to which such employee is entitled in the classification under which he is employed at the date of injury, or where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.
- (c) An employer shall pay his employee accident pay where the employee receives an injury for which compensation is payable by or on behalf of the employer pursuant to the provision of the said Act.
- (d) An employer shall pay, or cause to be paid, accident pay during the incapacity of the employee within the meaning of the said Act until such incapacity ceases or until the expiration of a period of 26 weeks from the date of injury, whichever event shall first occur.
- (e) The termination of the employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the employer to pay accident pay as hereinbefore provided.
- (f) An employee shall not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.
- (g) In the event that an employee receives a lump sum in redemption of weekly payments under the said Act, the liability of the employer to pay accident pay as herein provided shall cease from the date of such redemption.
- (h) Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the said Act he shall be liable to repay to his employer the amount of accident pay which the employer has paid under this clause and the employee shall not be entitled to any further accident pay thereafter.

14—SAFETY STANDARDS AND SAFE WORKING PRACTICES

- (a) No employee bound by this Part shall be permitted to perform underwater services unless he has completed six months employment as a tender/trainee diver or can produce satisfactory documented evidence of diving experience qualifying him for the work to be performed. Each entry shall be certified by a representative of the employer.

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(b) As from 1 January 1974 all divers employed under this Part shall be required to have and maintain an up-to-date log book containing details of all dives performed.

(c) The safety requirements of the appropriate Government Authority, of the State in which the work is performed, shall apply. In a State where there are no safety requirements of an appropriate Government Authority, the Australian Standard CZ18 and Z67/1972 Underwater Air Breathing shall be regarded as a guide to safe diving practice.

15—MEAL BREAKS AND MEAL ALLOWANCES

(i) Employees shall be entitled to a meal of a duration and at a time fixed by mutual arrangement.

(ii) An employee who is required to work overtime for more than two hours on any day after the usual finishing time shall be entitled to an allowance of \$1.50 as meal money unless he has been notified the previous day that his services would be required or a hot meal is provided by the employer; Provided that where any employee is notified that he will be required to work overtime the following day and such order is cancelled after he has left work on the day on which he was notified he shall be paid the sum of \$1.50 as meal money.

16—ATTENDANCE MONEY

(i) Where a casual employee is required to attend for work at the usual starting time and is not required to start work he shall be paid four hours pay plus fares and travelling time in accordance with clause 8 of this Part.

(ii) Where a weekly employee attends for work at the usual starting time and is told for the first time that he is stood down in accordance with clause 3 of this Part, he shall be entitled to be paid fares and travelling time in accordance with clause 8 of this Part.

17—PAYMENT OF WAGES

(a) Wages shall be paid weekly and the employer shall not keep more than two days pay in hand. An employee kept waiting for his wages on pay day for more than 15 minutes after the usual time for ceasing work shall be paid at overtime rates after that 15 minutes.

(b) Upon determination of the employment wages due to an employee shall be paid to him on the day of such determination or forwarded to him by post on the next working day.

PART III

1—APPLICATION OF PART III

Part III of this award shall apply to all employees covered by the award.

2—GRIEVANCE PROCEDURE

Subject to the *Conciliation and Arbitration Act 1904-1972* any dispute or claim shall be dealt with in the following manner:

- (a) The matter shall be submitted by an employee on the job to the appropriate officer of the employer.
- (b) If not settled, the employee shall submit the matter to an appropriate official of the Professional Divers Association who shall submit the matter to the employer or his agent.
- (c) If the matter is still not settled, it shall be submitted to the Commonwealth Conciliation and Arbitration Commission for decision.
- (d) While the above procedure is being followed, work shall continue normally on the instructions of the employer. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this sub-clause.

3—BOARDS OF REFERENCE

1. *General Boards of Reference*

(a) For the purpose of this award power is hereby given to the Industrial Registrar to appoint Boards of Reference for each of the States and areas in which the award operates.

(b) Each of the such Boards shall consist of one representative of the union, party to this award, and one representative of the employers, parties to this award, with the addition of the Industrial Registrar as chairman or such other person as he may nominate as chairman.

(c) Three members of the Board shall constitute a quorum.

(d) Any person appointed to represent either the union or the employers may appoint a substitute to act in his stead at any time.

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(e) A Board shall meet at such times and places as the members may agree, or failing agreement, as the chairman may determine, and it may adjourn from time to time and place to place.

(f) When a Board of Reference is divided in opinion on a question the question shall be decided according to the decision of the majority, but if there is no majority the opinion of the chairman shall be the decision of the Board.

(g) The functions of a Board of Reference shall be to settle and determine disputes or questions arising under this award except such matters as are dealt with by Special Boards of Reference.

(h) The decision of a Board of Reference may be reviewed and altered by the Commission on the application of any party to this award, provided that notice of application to review the decision be given to the opposite party and to the Registrar within 14 days of such decision and an application asking for such review be lodged with the Registrar within 21 days of the decision.

2. *Special Boards of Reference*

(a) The Arbitration Commissioner for the time being assigned to the industry of diving shall have power to appoint such Board or Boards of Reference as he may deem expedient from time to time consisting solely of himself or of another person nominated by him. Such Board or Boards of Reference shall have the function of determining the appropriate classification of an employee for the work on which he is engaged under Part I clause 4 or under Part II clause 4 of this award.

(b) The procedure of a Board of Reference including the times and places of meeting shall be at the entire discretion of the Commissioner or his nominee.

(c) Where the Commissioner appoints a person other than himself as a Board of Reference there shall be an appeal to the Commissioner from a decision of a Board of Reference with leave of the Commissioner.

(d) There shall be an appeal from the Commissioner's decision to a Presidential member.

4—RIGHT OF ENTRY

A duly accredited representative of the Professional Divers Association of Australasia shall have the right to enter the area occupied by the employer, but shall not without the permission of the employer interview an employee during his working hours.

5—UNION REPRESENTATIVE

(a) An employee appointed as a representative of the Professional Divers Association of Australasia shall, upon notification thereof to the employer, be recognised as an accredited Union representative, and shall be allowed the necessary time during working hours to interview the employer or his representative on matters affecting employees whom he represents.

(b) In respect of work covered by Part I the representative shall have the right to use an employer's communication equipment for the purpose of communicating with the Union or vice versa on any matter affecting the employees whom he represents. The cost of the use of the equipment shall be borne by the accredited Union representative.

6—POSTING OF AWARD

A copy of this award and all amendments thereto shall be exhibited or made available by the employer at the place of work.

7—BEREAVEMENT LEAVE

An employee shall be entitled to two days bereavement leave or, if based and working offshore at the time of the bereavement, four days bereavement leave without loss of pay on each occasion and on production of satisfactory evidence of the death in Australia of the employee's wife, father, mother, brother, sister, or child.

8—PREFERENCE IN EMPLOYMENT

In engaging employees under this award preference shall be given to members of the Professional Divers Association of Australasia other things being equal. This clause shall not apply to give preference to a member of the Professional Divers Association over a member of The Australian Workers Union in the area covered by Part I of this award.

9—SAVINGS

Nothing in this award shall operate to reduce the conditions of employment of any existing employee at the commencement date of this award.

AWARD—PROFESSIONAL DIVERS' (INTERIM)

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RESPONDENTS

Victoria

Aquarius Underwater Services, 18 Brisbane Street, Murrumbeena 3163.
 Associated Diving Industries, 8 Fenton Crescent, Frankston 3199.
 Mr W. Nissen, 286 Balcombe Road, Beaumaris 3193.
 United Salvage Pty. Ltd., 88 Normanby Road, South Melbourne 3205.
 Victorian Port Phillip Divers, 428 St. Kilda Road, Melbourne 3004.
 L. M. Walsh and Co. Pty. Ltd., Footscray Road, Footscray 3011.
 Sub-Sea Services, 21 Swanston Street, Melbourne 3000.

New South Wales

Ocean Systems Aust. Pty. Ltd, 505 St. Kilda Road, Melbourne 3004.
 Broman International Pty. Ltd., Raglan Street, Sale 3850.
 The Diving Co. Pty. Ltd., 23 Warraba Road, North Narrabeen 2101.
 John Holland (Constructions) Pty. Ltd., 182 Blues Point Road, North Sydney 2060.
 Newcastle Aqua Divers Pty. Ltd., 123 Tudor Street, Hamilton 2303.
 Atkinson-Leighton, Military Road, Matraville 2036.
 Leighton Contractors Pty. Ltd., 189 Kent Street, Sydney 2000.
 Aqua Mooring-Diving Services, 5 Templeman Crescent, Hillsdale 2036.
 Mr B. G. Buckley, 13 Moorall Avenue, Punchbowl 2196.
 Mr J. R. Barlow, Jnr., 55 Burleigh Avenue, Caringbah 2229.
 Mr L. Burke, 33 Gladstone Street, Balmain 2041.
 Marine and General Contractors, 6 Kinsel Avenue, Kingsgrove 2208.
 A. A. Marine Divers Pty. Ltd., 25 Palmerston Avenue, Bronte 2024.
 Clovelly Divers Service, 355 Clovelly Road, Clovelly 2031.
 F. Jenkins and Sons. Pty. Ltd., 45 Bay Road, Taren Point 2229.
 Ajax Diving and Salvage Co. Pty. Ltd., 2 Sydney Road, Hornsby 2077.
 Arrow Diving Co., McKenzie Petersen Wharf, No. 38 Wharf, Darling Harbour, N.S.W.
 Oceaneering International, C/o Messrs. E. P. Nygh and Co., 283 Alfred Street North, North Sydney 2060.
 Mr C. A. Robinson, 15 East Esplanade, Manly 2095.
 Pro-Diving Services Pty. Ltd., 274 Maroubra Road, Maroubra 2035.
 E. M. Moore Pty. Ltd., 6 Crystal Street, Newport 2106.
 Marine World Divers, 532 Military Road, Mosman 2088.
 E. R. Notting and Co. Pty. Ltd., 6 Crystal Street, Newport 2106.
 Leewil Constructions Pty. Ltd., 22 Seville Road, Villawood 2163.
 Kev Deacon United Underwater Photographics, 21 Bilberry Avenue, Bilgola Plateau 2107.
 Mr J. W. Gray, 239 West Botany Street, Rockdale 2216.

Queensland

Submarine Engineers Pty Ltd., 5 Jobson Street, Breakfast Creek 4010.
 Queensland Professional Diving Services, 1332 Anzac Avenue, Kallangur 4503.
 Aquanautic Pty. Ltd., 12 Yeronga Street, Yeronga 4104.
 Engwirda Salvage Pty Ltd., 12 Yeronga Street, Yeronga 4104.
 Australian Underwater Engineering, P.O. Box 147, East Brisbane 4169.
 J. K. Watt, 3 Atkinson Street, Mackay 4740.
 Far North Queensland Dive Tours, 24 Shields Street, Cairns 4870.
 Cape York Pearling Co. Pty. Ltd., 75 Abbot Street, Cairns 4870.
 Pearls Pty. Ltd., Victoria Parade, Thursday Island 4875.
 W. J. Duffield, John Street, Thursday Island 4875.
 F. F. Aprilovic, 373 McLeod Street, North Cairns 4870.
 Whyalla Shell Co. Pty. Ltd., 143 Esplanade, Cairns 4870.
 V. C. Zangari, 284 Campbell Street, Rockhampton 4700.
 B. N. Reed, 23 Graves Street, North Mackay 4740.
 Sub Sea Systems, 444 Fortitude Valley, Brisbane 4006.

South Australia

Mr C. Penglis, 2 Moorong Road, O'Sullivan Beach 5166.
 Mr J. E. Freeman, 17 Sabina Crescent, Christies Beach 5165.
 Aquasalve of South Australia, 285 West Beach Road, Richmond 5033.
 Marine Industries Pty. Ltd., 25 Quinlivan Road, Pooraka 5095.
 Underwater Industries, 35 Beatty Street, Linden Park 5065.

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Western Australia

Associated Moorings, 18 Grey Street, Bayswater 6053.
 Submarine Engineers Pty. Ltd., 5 Yampi Way, Willetton, Perth 6155.
 J. Ray McDermott (Aust.) Pty. Ltd., 16 St. George's Terrace, Perth 6000.
 Mr Arnold Rothwell, 143 Riverton Street, Wilson 6107.
 Mr J. W. Sue, 22 James Road, Kalamunda 6076.
 Stewart's Sea Salvage and Divers, 32 Clinton Avenue, Millen.
 Mr A. G. Richards, 6 Fleetwood Road, Lynwood 6155.
 Barry Martin Diver, 3 Pearse Street, North Fremantle 6159.
 Aquanaut Diving Co., 21 Mell Road, Spearwood 6163.
 Underwater Services, Port Beach Road, North Fremantle 6159.
 George Wookey Underwater Services, Port Beach Road, North Fremantle 6159.
 Mr W. E. Smith, 284 Carrington Street, Hilton 6163.
 W. A. Skindivers, 486 Murray Street, Perth 6000.
 Underwater World, 415 Stirling Highway, North Fremantle 6159.
 Diving Services (W.A.), 133b Forrest Street, Peppermint Grove 6011.
 Underwater Construction and Demolition Co., 3 Pearse Street, North Fremantle 6159.

Northern Territory

Commercial Diving Services, Becker Place, Rapid Creek 5792.

Tasmania

Underwater Operations, Boat Harbour Beach, Boat Harbour 7321.
 Aqua Scuba Diving Services Pty. Ltd., 54 Collins Street, Hobart 7000.
 Mr H. J. Griffiths, Griffiths Point, Wynyard 7325.

RESERVED RESPONDENTS

New South Wales

Marineland Pty. Ltd., West Esplanade, Manly 2095.
 The Hornibrook Group, 223 Pacific Highway, North Sydney 2060.

South Australia

Lawrie Diving and Marine Pty Ltd., 1 Jenkin Street, Birkenhead 5015.
 Port Stanvac Marine Pty Ltd., 61 Young Street, Parkside 5063.

The disputes came on for further hearing before the Commission (Mr Justice Aird, Mr Justice Coldham and Mr Deputy President Chambers) on 21 August 1973.

On 29 March 1974 the following order was made by the Commission:

Order and prescribe by consent:

That the above award be and the same is hereby varied in manner following that is to say:

I By deleting from the preamble the words 'Save and except those clauses which contain reference to the matters which are in section 31 of the above-mentioned Act.

II The foregoing variation shall come into operation as from the commencement of the first pay period after 20 July 1973 and shall remain in force for a period of two months.

VARIATION—SOUTH AUSTRALIAN TRAMWAY AND OMNIBUS AWARD
[*The Commission*]

The application insofar as it concerned matters contained within section 31 of the abovementioned Act came on for hearing before the Commission (Mr Justice Moore, President, Justice Gaudron and Mr Commissioner McCloghry) in Sydney on 6 May 1974.

On 10 June 1974 the following order was made by the Commission:

Order and prescribe by consent:

That the order made by the Commission (Mr Commissioner Paine) on 27 February 1974 varying the abovementioned award be varied: that is to say:

I By deleting from the preamble the words "Save and except for those parts of this order which contain reference to the matters which are in section 31 of the abovementioned Act".

II The said variation shall come into operation on 23 February 1974 and shall remain in force for a period of twelve months.

IN THE AUSTRALIAN CONCILIATION AND ARBITRATION
COMMISSION

In the matter of the *Conciliation and Arbitration Act 1904-1973*

and of

THE PROFESSIONAL DIVERS ASSOCIATION OF AUSTRALASIA
Claimant

v.

AQUARIUS UNDERWATER SERVICES and others
Respondents

(C No. 2330 of 1972)

and of

THE PROFESSIONAL DIVERS ASSOCIATION OF AUSTRALASIA
Claimant

v.

LEIGHTON CONTRACTORS PTY LTD and others
Respondents

(C No. 2452 of 1972)

and of

THE PROFESSIONAL DIVERS ASSOCIATION OF AUSTRALASIA
Claimant

v.

SUB-SEA SERVICES and others
Respondents

(C No. 1169 of 1973)

Industrial disputes—Wages and working conditions in the diving industry in Australia and its Territories—Award made.

On 13 July 1973 the Commonwealth Conciliation and Arbitration Commission (Mr Commissioner Portus) issued a decision and made an award⁽¹⁾ in connection with the abovementioned disputes.

The disputes came on for further hearing before the Commission (Mr Commissioner Portus) in Melbourne on 9 October 1973.

J. N. Button, solicitor, *S. J. Williams*, *J. E. Cooke* and *B. F. O'Brien* for The Professional Divers Association of Australasia.

P. B. Kelly for Atkinson Leighton Joint Venture and others.

C. J. Taylor for Broman Divers International Pty Ltd.

R. J. Hooper for United Salvage Company Pty Ltd.

K. Marks for J. Ray McDermott Pty Ltd and others.

On 26 February 1974 the Commission issued the following decision and made the award hereinafter appearing:

In this matter an interim award was made in July 1973 for a period of two months duration. The object was to establish a federal award and then make a final award at a later date, having heard more evidence and submissions. Hearings have

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May 6;
June 10.
Moore J.,
Gaudron J.,
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now been conducted and further evidence has been called and there have been a number of conferences with the parties. Also the Commission has had the benefit of inspections of diving work at Mackay, Botany Bay, and on the *Glomar Tasman* and the *Victoria Tide* in Bass Strait and on the *Ocean Digger* on the North West Shelf off Port Hedland. The Commission also inspected a diving unit at Newcastle.

The interim award consisted of certain general provisions and two special parts, one dealing with diving associated with the offshore oil drilling industry henceforth referred to as oil industry diving and the other dealing with diving associated with other activities henceforth referred to as other diving. As a result of conferences the parties have agreed that the form of the final award shall remain the same except that more general provisions have been agreed upon in place of special provisions for each part. Good progress was made in the conferences and the parties are to be commended on the area of agreement reached in this difficult matter of making for the first time a general award in a unique industry. Mr Button appeared for the Professional Divers Association of Australasia and Mr Taylor for the employers in oil industry diving and Mr Kelly and Mr Hooper for the employers in other diving, Mr Kelly making the main submissions.

The matters not agreed and upon which arbitration is required are as follows:

Cycle of duty for oil industry diving, wage rates including diving allowances, definitions, contract of employment for oil industry diving, safety, sick leave, preference in employment and date of operation and duration of award.

CYCLE OF DUTY FOR OIL INDUSTRY DIVING

The interim award continued the provision which existed in an earlier award of Mr Commissioner Clarkson in 1969. This was a period of duty of two weeks on the rig followed by one week of paid leave off the rig and whilst on the rig the divers were required to perform their duties at any time. There was no overtime or limitation of hours of work.

The claim now made is for a one on one off cycle and in pressing their claim the association drew attention to the fact that divers as young men with young families desire a system of working which will enable them to spend greater time with their families and that, as offshore oil drilling work is carried on in isolated areas in Bass Strait and the North West Shelf, they are required to spend part of their off-duty period in travelling to and from the rigs to their homes in the centres of population. The association also points out that the uncertainty of continuous employment in the industry discourages the divers moving their homes closer to the areas where the diving is being done. The association also points out that it is not an industry in which the employees are likely to obtain the benefit of long service leave and that to obtain the concession sought for it is prepared to accept no payment for public holidays and 14 days annual leave in lieu of the 21 days leave under the existing award. This would mean that if they worked two weeks on and two weeks off they would have an annual period of a month away from work, two weeks on annual leave and two weeks off duty period. Attention was also drawn to the fact that supervisors often work a one on and one off cycle and that under awards the officers and seamen on the *Victoria Tide* work one on and one off on a monthly cycle. Diving is done from this vessel which is the work boat associated with the rigs in Bass Strait.

For the employers attention is drawn to the cost of this provision which will mean a 33½ per cent increase in the number of divers employed to maintain the present diving crew strength on the rigs. Also it appears that in other parts of the world where this type of diving is done a two on and one off cycle is adopted.

Having regard to the submissions I consider the claim should be granted. There are special circumstances which apply to divers. Having regard to the stresses of

the occupation it is especially important that young married divers with families should have the opportunity of more family life. Also this is not an industry which is appropriate for long service leave provisions. There is the uncertainty of continuous employment and the fact that generally speaking diving is not an activity which carries on to middle life.

In granting the claim it is made clear: (1) That though the two-week cycle of duty usually will be most convenient to both parties the employer may adopt a one-week cycle if circumstances make it more convenient for him. (2) That the work cycle commences from the time of arrival on the rig or ship and ends with the time of departure therefrom. Transit time shall be part of the off-duty cycle. (3) The employer may require an employee to continue on duty in the off-duty cycle and that if he does so the employer shall allow the diver to add the extra time lost to his annual leave. I can see no justification for the claim made that all time spent offshore in excess of the work cycle shall be paid for at penalty rates. An annual leave provision is inserted in this award but this is of no effect until an order has been made by the full Commission. It is left to the association and the employers to seek by agreement from the full Commission the annual leave provision in the association's draft award.

There is one further point. Supervisors at present often work a one on one off cycle but during the off cycle they are required to deal with administrative and other matters. I think it fair that this practice should continue. I have made no provision in the award with regard to this but I am prepared to do so if any party considers it desirable.

WAGE RATES INCLUDING DIVING ALLOWANCE

Diving allowance

When the offshore Oil Drilling Divers Award was made by Mr Commissioner Clarkson in 1969 a claim was made for base pay plus a payment related foot-by-foot to the depths at which dives were performed. The depth pay was to be aggregated and then divided amongst the team responsible for the dive. The claim was refused because of the differentiation it would cause between the rates paid to diving crews.

The claim now made is in the following form:

An employee performing underwater services and a trainee diver performing training dives shall be paid in addition to the ordinary rate of pay an allowance of 20 cents per foot of water or equivalent pressure. Such allowance shall be payable once in respect of each period of 12 hours worked or subject to pressure between midnight on any day and midnight on the following day.

The basis of the claim is that the greater the depth the greater the skill, knowledge and experience required to carry out the dive safely, and the greater the risk that the dive will not be safe. Another factor becomes relevant. If diving is done in other than shallow water gradual decompression of the diver becomes necessary depending upon two factors, the depth pressure to which his body is subjected to and the time he spends subjected to that pressure.

The gradual decompression referred to may be carried out by bringing the diver to the surface in stages but often it is carried out in decompression chambers. Divers on occasions are required to live in these chambers for a matter of days. Also to avoid the necessity of receiving decompression the diver may be required to remain in diving bells and decompression chambers saturated at a high pressure for a period of days so that a series of dives may be made to considerable depths. The employers' exhibit with regard to the cost of the claim which is included in this decision gives some examples of saturation dives and decompression. The claim is

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that when a diver is being subject to saturation and decompression he should become entitled to the same allowance as during the period in which he is actually diving.

In support of the claim attention is drawn to the various cases where diving was done overseas on the basis of an extra payment for saturation diving in the form of a depth pay allowance depending on the depth in feet to which the dive is made. It was also pointed out that an allowance was justified as the amount of diving done could vary considerably, and that it was unfair that the same rate should be paid to all divers irrespective of whether they were called upon to dive or not. The evidence on this point is that on the *Glomar Conception* in Bass Strait last year on an average one bottom dive had been done per week. This does not take into account of various shallow dives done in connection with oil drilling equipment. Approximately two of these appear to be required each week. On the other hand over a shorter period than one year it appears that on the work boat the *Victoria Tide* about ten dives would be made per week.

Mr Taylor claimed that the present system of the flat rate should continue. He presented evidence as to overseas rates and with regard to the diving allowances claimed he put in the following exhibit as to how it would operate:

Example 1

A diver making a 400-foot surface to surface (bounce) dive for a 30-minute bottom time:

Maximum depth	..	..	..	400 feet
Bottom time	..	..	..	30 minutes
Decompression time	..	..	..	6 hours 19 minutes
Total time of dive	..	..	..	6 hours 49 minutes

Therefore equals 400×20 cents = \$80.00.

N.B. Such a dive would require two divers therefore with each diver receiving \$80.00 the cost to the company would be \$160.00.

Example 2

A diver making a 400-foot surface to surface (bounce) dive for a 60-minute bottom time:

Maximum depth	..	..	..	400 feet
Bottom time	..	..	..	60 minutes
Decompression time	..	..	..	41 hours 52 minutes
Total time of dive	..	..	..	42 hours 52 minutes

Working period	Maximum depth during that period	Depth pay per diver
		\$
First 12 hours	400 feet	80.00
Second 12 hours	190 feet	38.00
Third 12 hours	120 feet	24.00
Fourth 12 hours	45 feet	9.00
		<u>151.00</u>

N.B. Such a dive would require two divers therefore with each diver receiving \$151.00 the cost to the company would be \$302.00.

Example 3

Two divers making a 350-foot saturation dive, with excursion dives to 400 feet. Total time of dive, including decompression is twelve days. On the first day for example, 1 January 1974 at 0000 hours, start decompressing two divers for a 350-foot saturation dive:

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Compression time is 7 hours 30 minutes.

At 0730 on 1 January 1974, divers reached saturation depth, 350 feet.

At 0800 on 1 January 1974, divers made the first excursion to the depth of 400 feet.

Total time of the excursions will be 7 days, 5 hours and 30 minutes.

Date	Working period each 12 hours	From	To	Maximum depth	Depth pay per diver
1.1.74	1	0000	1200	400 feet	\$
1.1.74	2	1200	2400	400 feet	80.00
2.1.74	3	0000	1200	400 feet	80.00
2.1.74	4	1200	2400	400 feet	80.00
3.1.74	5	0000	1200	400 feet	80.00
3.1.74	6	1200	2400	400 feet	80.00
4.1.74	7	0000	1200	400 feet	80.00
4.1.74	8	1200	2400	400 feet	80.00
5.1.74	9	0000	1200	400 feet	80.00
5.1.74	10	1200	2400	400 feet	80.00
6.1.74	11	0000	1200	400 feet	80.00
6.1.74	12	1200	2400	400 feet	80.00
7.1.74	13	0000	1200	400 feet	80.00
7.1.74	14	1200	2400	400 feet	80.00
8.1.74	15	0000	1200	400 feet	80.00
8.1.74	16	1200	2400	400 feet	80.00

At 2040 on 8 January 1974, started decompression from 350 feet.

9.1.74	17	0000	1200	330 feet	66.00
9.1.74	18	1200	2400	266 feet	53.20
10.1.74	19	0000	1200	218 feet	43.60
10.1.74	20	1200	2400	175 feet	35.00
11.1.74	21	0000	1200	135 feet	27.00
11.1.74	22	1200	2400	96 feet	19.20
12.1.74	23	0000	1200	64 feet	12.80
12.1.74	24	1200	2400	36 feet	7.20

N.B. In this case there would be at least two divers involved and receiving \$1544 each. The cost to the company would therefore be \$3088.

Mr Kelly also opposed the introduction of a diving allowance.

I am of the opinion that a diving allowance along the lines claimed should be granted. I accept the general proposition that the greater the depth the greater the skill, knowledge and experience required to carry out the dive safely and the greater the risk that the diver will not be safe. I also accept that the allowances should extend to the period spent in the decompression chambers. I am conscious that at this stage the diver is not facing difficulties from the sea currents and other dangers of the sea but the slow adaptation of the body back to atmospheric pressure is an uncomfortable process and there is psychological strain on the diver in living in a small confined space for long periods and being dependant for his safety during the whole of that period on the successful carrying out of their duty by others. It can be regarded as a continuation of the dive itself. However, I am not prepared to award the rates claimed. Obviously the diving allowance must be considered together with the base pay and the base pay is not fixed for divers who do not dive. All the aspects of the work must be considered, I do not describe them. This has

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already been done very clearly by Mr Commissioner Clarkson in his 1969 decision under the headings of: The knowledge needed by a diver, the hazards of diving and the personal qualities needed by a diver. With regard to the oil industry diving I will insert a clause with the allowance at the rate of 7 cents per foot and I will also provide that for any period of twelve hours the minimum allowance shall be \$7. The form of the clause as expressed in the claim has been slightly varied as it appears to me that it could produce the result that dives made just before midnight or midday could be paid for differently from dives commenced just after those times. The allowance will be confined to the diver classification. In this case I do not think that sufficient consideration has been given as to whether it should also extend to trainee divers and supervisors. With regard to divers engaged in other diving no diving allowance will be fixed. I see no justification for it in shallow water diving and insufficient evidence is before me of deep water diving in other than the offshore industry.

Diver (other diving)

The present diver's rate is \$100. The claim is for a rate of \$148.50. The employers agree to this claim. The going rate in the industry appears to be about \$30 per day or \$150 per week, and last December the rate agreed upon for the Botany Bay project was \$155.58 per week. Having regard to the fact that the award is to operate for a period of 18 months and that the employers did not agree to the diving allowance claim, and that it is not granted, I consider it fair to fix the rate at \$156.

Diver (oil industry diving—other than offshore diving)

In the interim award covering oil industry diving the existing classifications and their rates of pay are, helium diver \$994, air diver \$891. As a helium mixture is the breathing medium used in dives over 180 feet this classification gave some recognition to the depth of a dive. The association is seeking the elimination of this classification and the fixation of a diver's rate of \$1008.

The employers claim that the present rates are adequate and as already pointed out they opposed the diving allowances claim and they also claim that the rates should be lower if the one and one period is adopted.

Having regard to the fact that a diving allowance is fixed I do not consider that justification exists for the continuation of the helium diver classification. The association's claim involves an increase of \$14 per week on the rate for a helium diver. It could be said that for most of the time work in the industry is carried out at depths of 180 feet or more and all the divers are at present classified as helium divers. In deciding the merits of this matter, I have regard to the existing rate being paid, to the diving allowance fixed, to the rate fixed for other diving and to the features of oil industry diving as compared to other diving including consideration of ocean currents and to the fact that the diver will be paid a monthly salary but will only normally be required to dive on few occasions during the month and will spend the rest of the time on the rig in activities meriting much less pay. Evidence has been referred to of the amount of diving done and with the change to one on one off this will not be more.

In working out a monthly salary Mr Commissioner Clarkson's original fixation equated the diver who was required to be available for 24 hours per day with a rig worker who worked 12 hours per day for 14 days. Mr Taylor did not accept this and by evidence drew attention to the fact that the work time of divers was considerably less. Mr Button also departed from Mr Commissioner Clarkson's approach and has related the offshore diver to the general diver on the basis that he, the offshore diver, should be paid for 8 hours per day on 28 days of the month. Having balanced all the consideration I think it would be more correct to work

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out the monthly rate by multiplying the general diver's daily rate by 28 and adjusting the payment to a calendar month. On this basis the rate works out at approximately \$950 and this is the rate I fix. Under the savings clause of the award existing employees are probably entitled to \$994 if this remuneration with diving allowance falls below this amount but as I consider this entitlement should also apply to new employees I have made a specific provision covering the matter.

Diver's attendant (other diving)

This, in practice, is not a widely used classification as the tender's job is often done by other divers. The association's claim is for \$115.50. The interim award rate is \$68 and the employers consent to a rate of \$91 which is the going rate at the only establishment which they know to employ tenders. The association stresses responsibility of the tender for the safety of the diver. I take this into account but I do not find justification for fixing a higher rate than the going rate.

Diver's attendant (oil industry)

The association's claim is for a rate of \$784. The existing rate is \$615 and the employers oppose any increase. For the same reason as in other diving, this is not a classification widely used. The association drew attention to the rate of a rig labourer and claimed that the tender should be on the same rate. I do not accept this as I have already stated that I cannot equate the 24 hour availability for work of the tender who on an average works about eight hours with the 12-hour day worked by the labourer. The rate fixed is \$669. This takes into account the general rate fixed for tenders and allows for the tender working an 8-hour day on the rigs which is the same relationship between the two rates as that adopted in the association's submissions.

Supervisor (oil industry diving)

The existing rate is \$1250. In the interim award I explained the reasons for making this a very conservative fixation. The association's claim is a rate of \$1568. Mr Button points out that past practice in the industry is to pay double the diver's rate but their claim works out at a rate 50 per cent higher than the rate claimed for a diver. Mr Taylor opposes any alteration to the existing rate.

It appears that the practice in the industry overseas is to pay one and one-half times the diver's rate. Having regard to the great responsibility of the position I fix a rate of \$1450 per month.

Diving supervisor (other diving)

This is a new classification. The interim award provided for a leading hand diver. Mr Kelly agreed that the classification should be inserted but made no submissions as to the appropriate rate. It seems that few supervisors are employed. The rate claimed is \$198 per week and having regard to the rate fixed for oil industry diving which I consider involves much more responsibility, the rate fixed is \$183 per week.

DEFINITIONS

The only significant difference between the parties is that the association claims that experience for certain periods shall be written into the definitions of a diving supervisor, a diver and a diver's attendant/trainee diver. The requirements are that a diving supervisor shall have worked as a diver for at least six months, that a diver shall spend a period of not less than six months as a diver's attendant/trainee diver or produce satisfactory documented evidence of diving experience qualifying him for the work to be performed, that a diver's attendant/trainee diver shall have at least three months' experience as a diving attendant.

Mr Kelly accepts these definitions but Mr Taylor claims that it is not helpful to write these qualifications into the definitions. It can be left to the employer to decide the qualifications required by him for a supervisor, a diver and a diver's attendant/trainee diver.

There was no evidence on these matters and in these circumstances I am not prepared to grant these claims. The case of the diver is discussed under the heading 'Safety'.

Because of the differing attitudes of employers separate definition clauses will be inserted in the oil drilling diving, and in the other diving parts of the award.

CONTRACT OF EMPLOYMENT

The point in issue is a claim by the association that employment for the first month shall be on a weekly basis and thereafter shall be on a monthly basis. At present employment is on a weekly basis for the first three months and thereafter on a monthly basis. The association's claim is based on the necessity for divers in the offshore oil industry to take employment at long distances from their homes. Because of the arrangements involved to meet this circumstance greater security of employment should be provided. Attention was drawn to the fact that divers at Sale had been terminated and subsequently re-engaged with resulting disorganization of their domestic arrangements. The history of this matter is outlined in my decision of July last when the interim award was made. To summarize it Mr Commissioner Clarkson granted the claim in 1969 but when the A.W.U. award was made in 1971 by consent the present provision was inserted and in my decision of July last I did not consider the matter had been sufficiently considered to justify any alteration.

The diving contractor in Bass Strait drew attention to the fact that under contracts with the oil companies they are subject to 30 days' notice of termination of contract and that they could be left with liability to the divers for a period after their contract with the oil company expired. It is also pointed out that because of bad weather or other circumstances one month may not be sufficient to judge whether a particular diver will make a satisfactory employee and safe member of a diving team. He may not have made any dives in the trial period of a month.

Broadly speaking I consider that the claim should be granted to give the greater security of employment sought but I must have regard to the important consideration that an employer should have the opportunity of judging the capability in the water of a diver who he has engaged before he becomes committed to a month's period of employment. Consequently the award will provide that employment for the first month shall be on a weekly basis and thereafter shall be on a monthly basis provided that if a diver or a trainee diver has not made two dives within the period of the first month of employment he shall continue on a weekly basis for a further month or until the conclusion of the week of employment which follows the week in which the second dive is made, whichever period first expires.

SAFETY

The differences between the parties are the necessary experience required before a diver can be employed, a limitation in the daily working hours of a diver, and the log book entry concerning decompression when carried out.

The first claim is that no employee shall be permitted to perform underwater services unless he has completed six months employment as a diver attendant/trainee diver or can produce satisfactory documented evidence of diving experience qualifying him for the work to be performed. This claim ties in with the claim concerning the definition of the diver and it is in similar terms to an existing clause in the interim award.

Mr Taylor's objection to the clause is that a diver should be in the position to graduate from one dive to something a little more difficult and that this is possible under the Victorian Mines Department regulations but not under the clause suggested.

I consider Mr Taylor's objection is sound. The clause sought appears to prevent an employer employing a diver on a dive which he has not done before unless he has completed six months experience as a diver's attendant/trainee diver. This is unnecessarily restrictive. There may be circumstances where a person is capable of doing the dive required who has not had the six months experience mentioned. If there is a restriction required in the interests of safety, I consider that unless there is some special circumstance, it should be inserted in the regulations and not in the award.

The second claim is that except in emergency circumstances employees bound by this award shall not be required or permitted to work in excess of twelve hours in any period of twenty-four hours between midnight and midnight on the following day and provided that no employee shall be required or permitted to work under any circumstances in excess of twelve consecutive hours without a break of eight consecutive hours.

Hours are not fixed under the award; no issue of overtime arises. The basis of the claim is safety. Mr Taylor's objection is that the clause is unworkable. What would happen in the case of saturation diving or in the case of divers under decompression?

I do not consider this clause or any modification of it should be granted. The very detailed Victorian mines regulations concerning safety deal with hours of duty and they impose restrictions in the case of supervisors and diving attendants but not divers. No evidence has been presented to me in these proceedings to help in considering the claim, and it appears best to leave this matter to the regulations and not deal with it in this award.

The third claim concerns diving involving decompression. The regulations require that when such dives occur the decompression schedule used shall be entered in the diver's log book. It has been agreed also that divers bound by the award shall be required to have with them and maintain a log book and that various particulars concerning dives including decompression shall be entered in the book. The regulations approve the following decompression schedules, those recognised by the Royal Australian Navy, or the United States Navy, or the schedules of any other body approved under the regulations or schedules issued under the regulations. Whichever schedule is used for decompression on a particular dive is required to be entered in the log book. The association's claim is that not only should the schedule be referred to but that there should also be an entry recording the actual time at each depth or equivalent pressure. In the course of discussion it was accepted that the claim would involve entering unnecessary detail in the log book. Accordingly the claim was not pressed providing the employee could call upon the employer to supply him with the employee's complete record of the decompression.

The employers would not agree to this; they claimed that this information was confidential. However, it appears to me to be reasonable and a sub-clause will be inserted providing that on request the employer shall supply a diver with the particulars of the times and depths of any decompression carried out in connection with a dive made by that diver.

SICK LEAVE

The only point in issue is the amount of sick leave for diving attendants. The leave agreed to for divers is the same as in the oil industry diving section of the

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interim award namely two weeks per year with a special arrangement for an extra two weeks' leave. Diving attendants under the interim award received one week and the claim is that they should receive two weeks which would be less than is allowed to divers because the special arrangement of an extra two weeks would not apply to them.

Both Mr Taylor and Mr Kelly opposed this claim and they pointed out that the considerations which apply to divers have no application in the case of tenders. A diver cannot dive when he is suffering from mild respiratory or ear infections. This does not apply to a tender who does not enter the water.

The association argued that because the tender was more exposed to the weather than the normal worker more sick leave should be allowed. There was no evidence of the incidence of sickness amongst diving attendants and I am not convinced that they should be treated differently from the ordinary worker. Sick leave of one week shall be fixed for the first year of service and one and one-half weeks in each subsequent year. This fixation takes into account the sick leave fixed under the Oil Drilling Rig Workers Award, 1973.

PREFERENCE IN EMPLOYMENT

The association seeks the type of preference clause which was awarded in March 1973 in the Clerks Oil Company Award. This clause provides that in dealing with engagement of labour the employer may engage a suitable member of the union or if he is not able to do so he may engage an employee after he has given fourteen days' notice to the union of the vacancy. In making this decision after having given such notice the employer must give preference to members of the union but he is excused from doing so if he has reasonable grounds for believing that the members offering are unsuitable for performing the particular work required. The clause also provides that in an emergency pending the expiration of the fourteen days the employer may engage a non-member but only for a period of five days. The clause also provides for preference of members in promotion and for similar preference in retention of employment subject to provisos as to misconduct and capability of performing duties. Finally the clause deals with preference to members concerning the time of taking annual leave.

The association claims that a clause of this nature should be extended to this industry. The employers oppose the clause and they claim that there is evidence that the association cannot supply labour when required, that the services of a diver may be required quickly, that the industrial record of the association does not entitle it to a provision of this nature and that the choice of a professional diver as a suitable member of a diving team is so important from a safety point of view that it should not be restricted.

The industrial record of the association could in some cases be relevant but I do not take it into consideration in this decision. However, I am satisfied that a greater field of choice should be available to the employer than is provided in the clause sought. At the same time I think the interests of the association should be furthered. This I think, can be achieved if the employer is in the position in engaging employees to treat, in the same way as a member, a prospective employee who satisfies him that he has applied to the association in writing to become a member. Preference in engagement will thus be given to members and to persons who are prepared to become members. I see no reasons why the sub-clause sought concerning retention in employment should not be granted. The clauses mentioned should be adequate to further the interests of the association. I do not think there is any necessity for a clause dealing with preference in promotion or preference as to the taking of annual leave. The clause will have no application to supervisors. This matter was not argued but because of the supervisory nature of their work I am not prepared in this award to extend the clause to them.

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DATE OF OPERATION AND DURATION OF AWARD

There is very little between the parties on these matters. The association asked that as to wage rates the award operate on and from 1 February 1974, which was the date on which the case concluded, and as to other matters from the date of the decision. The duration of the award sought was 30 June 1975. Mr Kelly agreed with the date of operation except that it should be specified to be the first pay period to commence in February. He said that the duration of the award should be eighteen months. Mr Taylor claimed that the award should operate from the commencement of the first pay period after the date of the decision with the proviso that should any alteration be made to the work cycle the company should be allowed time to engage extra staff for manning. He also claimed that the duration of the award should be eighteen months.

Having considered the various submissions I will provide that the award shall come into operation, in so far as wage rates are concerned, as from the first pay period on or after 1 February. I consider it impracticable to bring into operation the alteration to the work cycle without reasonable notice to the company. Accordingly these provisions will operate from the commencement of the first work cycle on or after 1 April 1974. With regard to other matters the award will operate from the commencement of the first pay period after the date of the decision. The award will continue in operation until 30 June 1975.

Award order and prescribe:

Save and except clause 21—Annual leave—and clause 27—Hours—which are matters to be dealt with under section 31 of the abovementioned Act.

1—TITLE

This award shall be known as the Professional Divers' Award, 1974.

1A—ARRANGEMENT

Clause number	Subject
1	Title
1A	Arrangement
2	Parties bound, area and incidence
3	Date of operation and duration
4	Safety standards and safe working practices
5	Insurance and accident pay
6	Sick leave
7	Grievance procedure
8	Boards of Reference
9	Right of entry
10	Union representative
11	Posting of award
12	Bereavement leave
13	Preference in employment
14	Savings
PART II	
15	Application of part II
16	Definitions
17	Contract of employment
18	Periods of duty
19	Wage rates
20	Transportation
21	Annual leave
22	Diving clothing and equipment
PART III	
23	Application of part III
24	Definitions
25	Contract of employment
26	Wages
27	Hours

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Clause number	Subject
28	Overtime
29	Special allowance
30	Fares and travelling time
31	Distant work
32	Public holidays
33	Annual leave
34	Meal breaks and meal allowances
35	Attendance money
36	Payment of wages
	Schedule of respondents

2—PARTIES BOUND AREA AND INCIDENCE

This award shall be binding upon the Professional Divers Association of Australasia and its members and upon the employers named in the schedule hereto as to the employment by them of all employees whether members of the association or not who are engaged in or in connection with diving in the provision of underwater services in areas within the Commonwealth of Australia or within the adjacent areas as defined in the *Petroleum (Submerged Lands) Acts*, Commonwealth or State as the case may be.

3—DATE OF OPERATION AND DURATION

This award shall come into operation in manner following:

- (i) As to clause 19—Wages—and clause 26—Wages—as from the first pay period commencing on or after 1 February 1974;
- (ii) as to clause 18—Periods of duty—as from the first duty period commencing on or after 1 April 1974;
- (iii) as to all other matters as from the first pay period commencing on or after 26 February 1974.

The award shall remain in force until 30 June 1975.

4—SAFETY STANDARDS AND SAFE WORKING PRACTICES

- (a) (i) Each diver bound by this award shall keep a personal log book showing:
 - (a) Date of each dive,
 - (b) equipment and breathing medium used,
 - (c) bottom time,
 - (d) depth,
 - (e) reason for dive,
 - (f) decompression carried out.

Such log book shall be readily available at all reasonable times for perusal by an inspector. Each entry shall be certified by a duly authorised representative of the relevant employer.
- (ii) Where more than two dives are made on any one day in depths of 30 feet or less it will not be necessary to enter each dive separately in the log book. On the Atkinson Leighton project at Botany Bay this sub-clause shall apply up to depths of 40 feet but not elsewhere.
- (iii) On request the employer shall supply a diver with the particulars of the times and depths of any decompression carried out in connection with a dive by that diver.
- (b) The safety requirements of the appropriate government authority of the State in which the work is performed shall apply. In a State where there are no safety requirements of an appropriate government authority, the Australian Standard CZ18 and Z67/1972 Underwater Air Breathing shall be regarded as a guide to safe diving practice. Provided that in the case of offshore exploration and development diving, the provisions of sub-clause (c) shall apply.
- (c) In respect of offshore exploration and development diving, the minimum safety standards and safe working practices to be observed shall be those contained in regulations or directions made under the appropriate State or Commonwealth *Petroleum (Submerged Lands) Act*. Provided that where no such regulations or directions have been issued by the appropriate authority, the Victorian Mines Department directions shall be observed except insofar as they impose an obligation on the employer to produce documents or other records to the designated authority or to obtain the consent of the designated authority.
- (d) (i) The medical examination of divers referred to in the regulations or directions made under the appropriate State or Commonwealth *Petroleum (Submerged Lands) Act* shall include but not be limited to:
 - (a) The requirement set out in appendix A of the Standards Association of Australia Compressed Air Code ASC 12-48,
 - (b) a chest X-ray,
 - (c) an audiogram,
 - (d) a check of evidence of cranial surgery,
 - (e) a check for the fitting of dentures (if any),
 - (f) a long bone X-ray.

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Provided that the chest X-ray, audiogram and long bone X-rays need only be done at 12-monthly intervals.

- (ii) The employer shall bear the cost of medical examinations required by this clause, provided that the medical practitioner shall enter in the diver's log book that the diver is 'fit for diving' or 'not fit for diving' as the case may be, and further, that the details of results of the examination shall be the property of the employer.

5—INSURANCE AND ACCIDENT PAY

- (a) The employer shall obtain and keep current an insurance policy covering any employee not otherwise covered by the workers' compensation laws of the State or Territory in which the said employee is assigned to work or adjacent to the area in which the said employee is assigned to work. Such cover shall provide benefits at least equal to the benefits prescribed by the aforesaid laws and without limiting the generality of the foregoing in particular shall provide benefits as to medical and like expenses, weekly or other periodical payments, or lump sum payments, at least equal to the benefits prescribed by the aforesaid laws. The phrase 'adjacent to the area' shall have the same meaning *mutatis mutandis* as the phrase 'the adjacent areas as defined in the *Petroleum (Submerged Lands) Act, 1967*'.

(b) Accident pay

- (i) An employer shall pay an employee accident pay where the employee received an injury for which weekly payments or compensation are payable by or on behalf of the employer pursuant to the provisions of the appropriate *Workers' Compensation Act*.
- (ii) 'Accident pay' means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the said appropriate *Workers' Compensation Act* and the employee's appropriate ordinary award rate, or where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.

An employer shall pay, or cause to be paid, accident pay during the incapacity of the employee within the meaning of the said Act until such incapacity ceases or until the expiration of 26 weeks from the date of injury, whichever event shall first occur.

- (iii) The liability of the employer to pay accident pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable under the said appropriate Act, and the termination of the employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the employer to pay accident pay as provided in this clause.
- (iv) In the event that the employee receives a lump sum in redemption of weekly payments under the said Act the liability of the employer to pay accident pay as herein provided shall cease from the date of such redemption.

6—SICK LEAVE

- (a) After four weeks' service an employee who is absent from work on account of personal illness or an account of injury by accident, for which he is not entitled to workers' compensation, shall, on production within 48 hours of the commencement of such absence of evidence of his illness or injury satisfactory to his employer, be entitled to leave of absence on the prescribed rate of pay for a period of, in the case of a diver, including a diver's attendant/trainee diver, two weeks and in the case of a diver's attendant one week of working time in any one year of service.
- (b) Such sick leave shall accumulate from year to year so that any balance of the period specified in sub-clause (a) hereof up to one week which has not been allowed to an employee by his employer as paid sick leave may be claimed by the employee and, subject to the conditions herein prescribed, shall be allowed by his employer in any subsequent year without diminution of the sick leave prescribed in respect of that year.

Provided that no employee shall be entitled to receive and no employer shall be bound to make payment for more than eight weeks' absence from work through illness in any one year.

- (c) In the event of a diver suffering any serious illness or injury resulting in inability to perform any work in circumstances in which workers' compensation was not payable he shall be given an extra two weeks' sick leave with the employer having the right to have him medically examined and approved for sick leave by a doctor nominated by the employer. The provision for four weeks' sick leave is to cover a situation of disabling illness in one year.

7—GRIEVANCE PROCEDURE

Subject to the *Conciliation and Arbitration Act 1904-1973* any dispute or claim shall be dealt with in the following manner:

- (a) The matter shall be submitted by an employee on the job to the appropriate officer of the employer.
- (b) If not settled, the employee shall submit the matter to an appropriate official of the Professional Divers Association who shall submit the matter to the employer or his agent.

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- (c) If the matter is still not settled, it shall be submitted to the Australian Conciliation and Arbitration Commission for decision.
- (d) While the above procedure is being followed, work shall continue normally on the instructions of the employer. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this sub-clause.

8—BOARDS OF REFERENCE

- (a) For the purpose of this award power is hereby given to the Industrial Registrar to appoint Boards of Reference for each of the States and areas in which the award operates.
- (b) Each of the such boards shall consist of one representative of the union, party to this award, and one representative of the employers, parties to this award, with the addition of the Industrial Registrar as chairman or such other person as he may nominate as chairman.
- (c) Three members of the board shall constitute a quorum.
- (d) Any person appointed to represent either the union or the employers may appoint a substitute to act in his stead at any time.
- (e) A board shall meet at such times and places as the members may agree, or failing agreement, as the chairman may determine, and it may adjourn from time to time and place to place.
- (f) When a Board of Reference is divided in opinion on a question the question shall be decided according to the decision of the majority, but if there is no majority the opinion of the chairman shall be the decision of the board.
- (g) The functions of a Board of Reference shall be to settle and determine disputes or questions arising under this award.
- (h) The decision of a Board of Reference may be reviewed and altered by the Commission on the application of any party to this award, provided that notice of application to review the decision be given to the opposite party and to the Registrar within 14 days of such decision and an application asking for such review be lodged with the Registrar within 21 days of the decision.

9—RIGHT OF ENTRY

A duly accredited representative of the Professional Divers Association of Australasia shall have the right to enter the area occupied by the employer, but shall not without the permission of the employer interview the employee during his working hours.

10—UNION REPRESENTATIVE

- (a) An employee appointed as a representative of the Professional Divers Association of Australasia, shall, upon notification thereof to the employer, be recognised as an accredited union representative and shall be allowed the necessary time during working hours to interview the employer or his representative on matters affecting employees whom he represents.
- (b) The representative shall have the right to use an employer's communication equipment for the purpose of communicating with the union or vice versa on any matter affecting the employees whom he represents. The cost of the use of the equipment shall be borne by the accredited union representative.

11—POSTING OF AWARD

A copy of this award and all amendments thereto shall be exhibited or made available by the employer at the place of work.

12—BEREAVEMENT LEAVE

An employee shall be entitled to two days' bereavement leave or, if based and working offshore at the time of the bereavement, four days' bereavement leave without loss of pay on each occasion and on production of satisfactory evidence of the death in Australia of the employee's wife, father, mother, brother, sister or child.

13—PREFERENCE IN EMPLOYMENT

1 Method of engagement

- An employer shall observe the following procedure in engaging employees for employment:
- A member of the Professional Divers Association of Australasia or a person holding a current certificate under section 47 (3) of the *Australian Conciliation and Arbitration Act* or a person who satisfies the employer that he has applied to the association to become a member may be employed at any time.
- (b) Any other employee may be employed not less than 14 days after the employer has notified the association that an opportunity for employment exists and of the nature of the work involved in the employment.

Provided that in an emergency an employer may engage an employee for not more than five days without complying with the requirements of this sub-clause, but shall not thereafter continue or extend the employment and shall not renew it except after notification in accordance with this clause and subject to sub-clause 2—Preference in engagement. An employee engaged under this provision shall be paid a quarter of a month's pay.

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2 Preference in engagement

In relation to engagement in any employment an employer shall give preference to members of the Professional Divers Association of Australasia who have indicated to the employer directly or through the association directly their desire for employment by him within 14 days prior to the giving of the relevant notice under sub-clause 1 (b) or who so indicate within 14 days after the receipt of the notice by the association.

Provided that an employer shall be excused from the obligation to give preference in accordance with this sub-clause in the case of any particular member of the association if at the time of making the engagement the employer has reasonable grounds to believe and does believe that the member is incapable of performing the duties of the employment, being work the nature of which was notified to the association pursuant to sub-clause 1 (b). An employer shall not, within the meaning of this sub-clause, have reasonable grounds for believing that an employee is incapable of performing the duties of the employment unless he has made reasonable enquiries in the circumstances, including the giving of a reasonable opportunity to the employee, to establish his capacity.

3 Preference in retention of employment

In relation to the matter of retention in employment, the employer shall give preference to all members of the association employed by him. Provided that an employer shall be excused from the obligation to give preference in accordance with this sub-clause in the case of a particular member of the association who:

- (i) Is being dismissed for misconduct which justifies instant dismissal;
- (ii) Is incapable of performing the duties of his employment (otherwise than by temporary illness, incapacity or injury).

Seven days prior to giving a member of the association notice of intention to terminate his services (otherwise than in any of the circumstances referred to in sub-paragraphs (i) and (ii) of this paragraph) the employer shall notify the secretary of the association of the name of the member and the reason for his employment being terminated; provided that he shall be excused from giving such a notice if all his employees in the employment other than diving supervisors are members of the association or have applied for membership.

4 Information concerning association membership

An employer may enquire from the secretary of the association as to whether or not a particular employee is a member of the association, and for the purposes of discharging his obligation hereunder shall be entitled to rely on the correctness of the answer given.

5 Exemption

This clause shall not apply to diving supervisors.

14—SAVINGS

Nothing in this award shall operate to reduce the conditions of employment of any existing employee at the commencement date of this award.

PART II

15—APPLICATION OF PART II

This part shall apply to offshore exploration and development diving.

16—DEFINITIONS

Diving supervisor shall mean an employee appointed by the employer in writing to supervise diving operations, to instruct other divers and to be responsible for safe diving practices. He shall also be competent to carry out all classes of hydrocarbons exploration and development diving, including using helium/oxygen or similar mixtures, using submarine observation bells and operating from submarine working chambers.

Diver shall mean an employee trained and experienced in diving techniques, in underwater breathing, in the use of equipment used in diving operations, and in the administration of first-aid.

Diver's attendant shall mean an employee who has adequate knowledge of underwater work, the signals and communication devices used in diving operations, decompression procedures, and equipment used in diving operations. He shall carry out the function of attending a diver, including assisting him to dress and undress, handling hoses and/or lifelines and such other duties as may be assigned to him by the diving supervisor.

Diver's attendant/trainee diver shall mean a diver's attendant who is required to make surface-oriented training dives to qualify him as a diver under the direct supervision of a diving supervisor.

Offshore exploration and development diving shall mean and include all diving from oil drilling rigs, hydrocarbon exploration vessels or platforms, and diving in or in connection with the construction and maintenance of platforms and associated submarine pipelines.

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17—CONTRACT OF EMPLOYMENT

- (a) Employment for the first month shall be on a weekly basis and thereafter shall be on a monthly basis, provided that if a diver or a trainee has not made two dives within the period of the first month of employment he shall continue on a weekly basis for a further month or until the conclusion of the week of employment which follows the week in which the second dive is made, whichever period first expires.
- (b) Employment may be terminated by either side by giving a week's notice or a month's notice as the case may be. Notice may be given at any time during the week or the month, but the day on which the notice is given shall not count as part of the notice. An employer may dismiss an employee without notice for inefficiency, neglect of duty or misconduct and in such cases wages shall be paid up to the time of dismissal only. An employer may deduct payment for any day the employee cannot usefully be employed because of any strike.

Where an employee has given notice as aforesaid he shall continue in his employment until the date of the expiration of such notice. Any employee who, having given or who has been given notice as aforesaid without reasonable excuse (proof of which shall be on him), absents himself from work during such period shall be deemed to have abandoned his employment and shall not be entitled to payment for work done by him within that period.

- (c) An employee shall perform such work as his employer shall, from time to time, reasonably require.

18—PERIODS OF DUTY

- 1 Employees shall work on the basis of a duty period offshore followed by an off-duty period on shore. The duty period shall be two weeks followed by an off-duty period of two weeks provided that the employer may, if circumstances make it more convenient for him, adopt a one-week duty period followed by a one-week off-duty period. The duty period shall commence from the time of arrival on the rig or ship and end with the time of departure therefrom.
- 2 The employer may require an employee to continue on duty in the off-duty period and if he does so the employer shall allow the diver to add the off-duty time lost to his annual leave.

19—WAGE RATES

- (i) Employees shall be paid the amounts set out hereunder per calendar month according to the class of work.

Classification	Per month
	\$
Diving supervisor	1450
Diver	950
Diver's attendant	669
Diver's attendant/trainee diver	669

- (ii) In addition to the above rates a diver shall be paid a diving allowance of 7 cents per foot of water or equivalent pressure with a minimum allowance of \$7. Such allowance shall be payable once in respect of the greatest depth or equivalent pressure incurred in each period worked. For the purposes of this sub-clause a period worked shall begin from the time the diver enters the water or is subject to greater than atmospheric pressure and shall end 12 hours later. Further periods worked shall begin each 12 hours if at the end of a period worked or a further period worked a diver is still subject to greater than atmospheric pressure.
- (iii) A diver shall be paid \$994 per month if the wages payable under sub-clauses (i) and (ii) of this clause fall below this amount.

20—TRANSPORTATION

When an employee has completed his period of duty in accordance with clause 18 hereof he shall be provided with return transportation to the nearest town or centre of population where normal amenities are reasonably available.

21—ANNUAL LEAVE

- (a) A period of 14 consecutive days' leave in addition to non-working days shall be allowed annually to an employee after 12 months' continuous service in any one or more of the occupations to which this part applies.
- (b) The annual leave shall be given and taken in a continuous period, or if the employee and the employer so agree, in two separate periods. It shall be given and taken within six months of falling due.
- (c) An employee to whom sub-clause (a) of this clause applies shall before going on leave be paid the wages he would otherwise have been paid had he not been absent.

22—DIVING CLOTHING AND EQUIPMENT

- (a) The employer shall supply all diving equipment and ensure that it is maintained in a serviceable condition.
- (b) Employees who supply their own wetsuits and personal diving gear including weightbelt and diving knife, shall be paid an allowance of \$10 per month.

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PART III

23—APPLICATION OF PART III

This part shall apply to the employment of persons within the scope of this award in or in connection with diving in the provision of underwater services other than those covered by part II.

Also it shall not apply to employees engaged for other purposes than diving but who are required to dive as an ancillary activity.

24—DEFINITIONS

Diving supervisor shall mean an employee appointed in writing by the employer to supervise diving operations, to instruct other divers in diving techniques, and to be responsible for safe diving practices. He shall be competent to carry out all classes of diving. Before being designated a diving supervisor, an employee shall have worked as a diver for a period of not less than six months.

Diver shall mean an employee trained and experienced in diving techniques, in underwater breathing, in the use of equipment used in diving operations, and in the administration of first-aid. Before being classed or designated as a diver, an employee shall spend a period of not less than six months as a diver's attendant/trainee diver or produce satisfactory documented evidence of diving experience qualifying him for the work to be performed.

Diver's attendant shall mean an employee who has adequate knowledge of underwater work, the signals and communication devices used in diving operations, decompression procedures, and equipment used in diving operations. He shall carry out the function of attending a diver, including assisting him to dress and undress, handling hoses and/or lifelines, and such other duties as may be assigned to him by the diving supervisor.

Diver's attendant/trainee diver shall mean an employee with not less than three months' employment as a diving attendant, who is required to make surface-oriented training dives to qualify him as a diver under the direct supervision of a diving supervisor.

Casual employee shall mean an employee engaged to perform underwater services in circumstances where the duration of the employment is less than one week.

25—CONTRACT OF EMPLOYMENT

(a) *Weekly employment*

- (i) All employees except casual employees shall be employed by the week.
- (ii) Employment shall be terminated by a week's notice, on either side, given at any time during the week or by the payment or forfeiture of a week's wages, as the case may be. This shall not affect the right of the employer to dismiss any employee without such notice for malingering, inefficiency, neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only or to deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

Where an employee has given or been given notice, as aforesaid, he shall continue in his employment until the date of the expiration of such notice. Any employee, who having given or having been given notice, as aforesaid, without reasonable cause (proof of which shall lie on him) absents himself from work during such period shall be deemed to have abandoned his employment and shall not be entitled to payment for work done by him within that period.

(b) *Casual employment*

Casual employment shall be terminated by four hours' notice, on either side, or by the payment or forfeiture of four hours' wages as the case may be.

26—WAGES

- (a) Weekly employees shall be paid the amounts set out hereunder:

Classification	Per week
	\$
Diving supervisor	183
Diver	156
Diver's attendant	91
Diver's attendant/trainee diver	91

- (b) A casual employee shall be paid an hourly rate with a minimum payment for eight hours. The rate is one thirty-third of the weekly rate plus 15 per cent.

27—HOURS

The ordinary working hours of employees covered by this part shall not exceed six hours thirty-six minutes per day, Monday to Friday both inclusive. Where an employee is not employed on diving operations as such during the full six hours thirty-six minutes in any one day, the employer shall have the right to use his services on other work for any time remaining.

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28—OVERTIME

- (i) All time worked in excess of the hours prescribed by clause 27—Hours—of this part shall be paid at the rate of time and one-half for the first three hours and double time thereafter. In calculating overtime each day's work shall stand alone.
- (ii) All time worked on a Saturday shall be paid for at time and one-half for the first three hours and double time thereafter. All time worked on a Sunday shall be paid for at double time.
- (iii) Employees who work on a Saturday or Sunday shall be paid for a minimum of four hours' work.

29—SPECIAL ALLOWANCES

Employees who supply their own wetsuits and personal diving gear including weightbelt and diving knife shall be paid, in addition to the ordinary rate, an allowance of \$1 per day on each day on which a dive is performed.

30—FARES AND TRAVELLING TIME

An employee who is required to commence and finish work away from his employer's workshop or depot shall be reimbursed for excess fares and travelling time on the following basis:

- (i) An allowance of \$1 per day to compensate for excess fares to and from places of work provided that:
 - (a) The above stated allowance shall not be payable if the employer provides or offers to provide transport from the employee's home to the job and return, free of charge to the employee. The employee's home for this purpose shall include a place where an employee camps or where he is temporarily living.
 - (b) Subject to the foregoing provisions a fare shall be deemed to have been incurred if the employee has used a bicycle or other means of locomotion or has walked instead of using a public conveyance.
- (ii) An allowance of 0.6 hours pay per day to compensate for excess travelling time to and from places of work.

31—DISTANT WORK

- (i) For the purpose of this clause distant work is that in respect of which the distances or the travelling facilities to and from such places of work make it reasonably necessary that the employee should live and sleep at some place other than his usual place of residence at the time of commencing such work; provided that if the employee, whilst employed on distant work, changes his usual place of residence such new place of residence or any further change thereof (if made whilst employed on distant work) shall be the usual place of residence for determination whether the work is distant work within the meaning of this clause.
- (ii) An employee engaged on distant work shall be conveyed with tools to and from at his employer's expense. Such conveyance shall be made only once unless the employee is recalled and sent again to the place of work when it shall be made each time that this happens; provided that return fares and travelling time need not be paid to an employee who:
 - (a) Leaves his employment of his own free will; or
 - (b) is discharged for misconduct; before the completion of the job before being three months in such employment, whichever first happens, or is discharged for incompetence within one week of engagement.
- (iii) Time occupied in travelling to and from distant work shall be paid for at ordinary rates; provided that no employee shall be paid more than an ordinary day's wages for any day spent in travelling unless he is on the same day occupied in working for his employer. He shall be paid also an amount of \$1 to cover the expenses, if any, of reaching his home and of transporting his tools.
- (iv) (a) On distant work the employer shall provide reasonable board and lodging or pay an allowance of \$40 per week of seven days but such allowances shall not be wages. In the case of broken parts of a week occurring at the beginning or end of a period of distant work the allowance shall be all living expenses actually and reasonably incurred but not exceeding \$40.
 - (b) Reasonable board and lodging for the purposes of this clause shall mean lodging in a well-kept establishment with adequate furnishings, good bedding, good floor coverings, good lighting and heating in either a single room or a twin room if a single room is not available, with hot and cold running water.
- (v) An employee required to use his own vehicle in the course of his employment shall be paid a mileage allowance of 12 cents per mile.

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32—PUBLIC HOLIDAYS

- (i) Weekly employees shall be entitled to the following public holidays without loss of pay: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day, or such other day as is generally observed in the locality as a substitute for any of the said days respectively.
- (ii) Provided that by mutual agreement between any employer and employee any other day may be substituted.
- (iii) An employee who was absent from work on the working day preceding or the working day following the holiday or two or more consecutive holidays or on both of such working days shall not be entitled to payment for the holiday or holidays unless he produces or forwards evidence, satisfactory to the employer, that his absence was due to a good and satisfactory cause.
- (iv) All work done on public holidays shall be paid for at the rate of double time and one-half with a minimum payment for four hours' work.

33—ANNUAL LEAVE

- (a) A period of 21 consecutive days' leave, including non-working days, shall be allowed annually to an employee after 12 months' continuous service in any one or more of the occupations to which this part applies.
- (b) Subject to this sub-clause the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by clause 32 of this part, and if any such holidays fall within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

Where a holiday falls as aforesaid and the employee fails without reasonable cause (proof whereof shall be upon him) to attend for work at his ordinary starting time on the working day immediately following the last day of his period of annual leave, he shall not be entitled to be paid for any such holiday.
- (c) The annual leave shall be given and taken in a continuous period, or if the employee and the employer so agree, in two separate periods. It shall be given and taken within six months of falling due.
- (d) An employee to whom sub-clause (a) of this clause applied shall, before going on leave, be paid the wages he would otherwise have been paid pursuant to clause 26 had he not been absent.
- (e) If an employee:
 - (i) After one month's employment in his first qualifying 12-monthly period with an employer, lawfully leaves the employment of the employer or his employment is terminated by the employer through no fault of the employee, or
 - (ii) after 12 months' continuous service with an employer leaves his employment or his employment is terminated by the employer, he shall be paid pro rata to his period of service at the rate prescribed by clause 26 hereof.

34—MEAL BREAKS AND ALLOWANCES

- (i) Employees shall be entitled to a meal of a duration and at a time fixed by mutual agreement.
- (ii) An employee who is required to work overtime for more than two hours on any day after the usual finishing time shall be entitled to an allowance of \$1.50 as meal money unless he has been notified the previous day that his services would be required or a hot meal is provided by the employer; provided that where any employee is notified that he will be required to work overtime the following day and such order is cancelled after he has left work on the day on which he was notified he shall be paid the sum of \$1.50 as meal money.

35—ATTENDANCE MONEY

- (i) Where a casual employee is required to attend for work at the usual starting time and is not required to start work he shall be paid four hours' pay plus fares and travelling time in accordance with clause 30 of this part.
- (ii) Where a weekly employee attends for work at the usual starting time and is told for the first time that he is stood down in accordance with clause 25 he shall be entitled to be paid fares and travelling time in accordance with clause 30 of this part.

36—PAYMENT OF WAGES

- (a) Wages shall be paid weekly and the employer shall not keep more than two days' pay in hand. An employee kept waiting for his wages on pay day for more than 15 minutes after the usual time for ceasing work shall be paid at overtime rates after that 15 minutes.

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(b) Upon determination of the employment, wages due to an employee shall be paid to him on the day of such determination or forwarded to him by post on the next working day.

SCHEDULE OF RESPONDENTS

VICTORIA

Aquarius Underwater Services, 18 Brisbane Street, Murrumbeena 3163.
Associated Diving Industries, 8 Fenton Crescent, Frankston 3199.
Mr W. Nissen, 286 Balcombe Road, Beaumaris 3193.
United Salvage Pty. Ltd., 88 Normanby Road, South Melbourne 3205.
Victorian Port Phillip Divers, 428 St. Kilda Road, Melbourne 3004.
L. M. Walsh and Co. Pty. Ltd., Footscray Road, Footscray 3011.
Sub-Sea Services, 21 Swanston Street, Melbourne 3000.
Ocean Systems Aust. Pty. Ltd., 505 St. Kilda Road, Melbourne 3004.
Broman International Pty. Ltd., Raglan Street, Sale 3850.

NEW SOUTH WALES

The Diving Co. Pty. Ltd., 23 Warraba Road, North Narrabeen 2101.
John Holland (Constructions) Pty. Ltd., 182 Blues Point Road, North Sydney 2060.
Newcastle Aqua Divers Pty. Ltd., 123 Tudor Street, Hamilton 2303.
Atkinson-Leighton, Military Road, Matraville 2036.
Leighton Contractors Pty. Ltd., 189 Kent Street, Sydney 2000.
Aqua Mooring-Diving Services, 5 Templeman Crescent, Hillsdale 2036.
Mr B. G. Buckley, 13 Moorall Avenue, Punchbowl 2196.
Mr J. R. Barlow, Jnr., 55 Burleigh Avenue, Caringbah 2229.
Mr L. Burke, 33 Gladstone Street, Balmain 2041.
Marine and General Contractors, 6 Kinsel Avenue, Kingsgrove 2208.
A. A. Marine Divers Pty. Ltd., 25 Palmerston Avenue, Bronte 2024.
Clovelly Divers Service, 355 Clovelly Road, Clovelly 2031.
F. Jenkins and Sons Pty. Ltd., 45 Bay Road, Taren Point 2229.
Ajax Diving and Salvage Co. Pty. Ltd., 2 Sydney Road, Hornsby 2077.
Arrow Diving Co., McKenzie Petersen Wharf, No. 38 Wharf, Darling Harbour, N.S.W.
Oceanengineering International, c/- Messrs E. P. Nygh and Co., 283 Alfred Street North, North Sydney 2060.
Mr C. A. Robinson, 15 East Esplanade, Manly 2095.
Pro-Diving Services Pty. Ltd., 274 Maroubra Road, Maroubra 2035.
E. M. Moore Pty. Ltd., 6 Crystal Street, Newport 2106.
Marine World Divers, 532 Military Road, Mosman 2088.
E. R. Notting and Co. Pty. Ltd., 6 Crystal Street, Newport 2106.
Leewil Constructions Pty. Ltd., 22 Seville Road, Villawood 2163.
Kev Deacon United Underwater Photographics, 21 Bilberry Avenue, Bilgola Plateau 2107.
Mr J. W. Gray, 239 West Botany Street, Rockdale 2216.

QUEENSLAND

Submarine Engineers Pty. Ltd., 5 Jobson Street, Breakfast Creek 4010.
Queensland Professional Diving Services, 1332 Anzac Avenue, Kallangur 4503.
Aquanaut Pty. Ltd., 12 Yeronga Street, Yeronga 4104.
Engwirda Salvage Pty. Ltd., 12 Yeronga Street, Yeronga 4104.
Australian Underwater Engineering, P.O. Box 147, East Brisbane 4169.
J. K. Watt, 3 Atkinson Street, Mackay 4640.
Far North Queensland Dive Tours, 24 Shields Street, Cairns 4870.
Cape York Pearling Co. Pty. Ltd., 75 Abbot Street, Cairns 4870.
Pearls Pty. Ltd., Victoria Parade, Thursday Island 4875.
W. J. Duffield, John Street, Thursday Island 4875.
F. F. Aprilovic, 373 McLeod Street, North Cairns 4870.
Wyalla Shell Co. Pty. Ltd., 143 Esplanade, Cairns 4870.
V. C. Zangari, 284 Campbell Street, Rockhampton 4700.
B. N. Reed, 23 Graves Street, North Mackay 4740.
Sub Sea Systems, 444 Fortitude Valley Brisbane 4006.

SOUTH AUSTRALIA

Mr C. Penglis, 2 Moorong Road, O'Sullivan Beach 5166.
Mr J. E. Freeman, 17 Sabina Crescent, Christies Beach 5165.
Aqua Salvage of South Australia, 285 West Beach Road, Richmond 5033.
Marine Industries Pty. Ltd., 25 Quinlivan Road, Pooraka 5095.
Underwater Industries, 35 Beatty Street, Linden Park 5065.

AWARD—PROFESSIONAL DIVERS

[Commr Portus

WESTERN AUSTRALIA

Associated Moorings, 18 Grey Street, Bayswater 6053.
Submarine Engineers Pty. Ltd., 5 Yampi Way, Willetton, Perth 6155.
J. Ray McDermott (Aust.) Pty. Ltd., 16 St. George's Terrace, Perth 6000.
Mr Arnold Rothwell, 143 Riverton Street, Wilson 6107.
Mr J. W. Sue, 22 James Road, Kalamunda 6076.
Stewart's Sea Salvage and Divers, 32 Clinton Avenue, St. James 6102.
Mr A. G. Richards, 6 Fleetwood Road, Lynwood 6155.
Barry Martin Diver, 3 Pearse Street, North Fremantle 6159.
Aquanaut Diving Co., 21 Mell Road, Spearwood 6163.
Underwater Services, Port Beach Road, North Fremantle 6159.
George Wookey Underwater Services, Port Beach Road, North Fremantle 6159.
Mr W. E. Smith, 284 Carrington Street, Hilton 6163.
W.A. Skindivers, 486 Murray Street, Perth 6000.
Diving Services (W.A.) 133b Forrest Street, Peppermint Grove 6011.
Underwater World, 415 Stirling Highway, North Fremantle 6159.
Underwater Construction and Demolition Co., 3 Pearse Street, North Fremantle 6159.

NORTHERN TERRITORY

Commercial Diving Services, Becker Place, Rapid Creek 5792.

TASMANIA

Underwater Operations, Boat Harbour Beach, Boat Harbour 7321.
Aqua Scuba Diving Services Pty. Ltd., 54 Collins Street, Hobart 7000.
Mr H. J. Griffiths, Griffiths Point, Wynyard 7325.

RESERVED RESPONDENTS

NEW SOUTH WALES

Marineland Pty. Ltd., West Esplanade, Manly 2095.
The Hornibrook Group, 223 Pacific Highway, North Sydney 2060.

SOUTH AUSTRALIA

Lawrie Diving and Marine Pty. Ltd., 1 Jenkin Street, Birkenhead 5015.
Port Stanvac Marine Pty. Ltd., 61 Young Street, Parkside 5063.

The disputes insofar as they concerned matters contained within section 31 of the Act came on for hearing before the Commission (Mr Justice Moore, President, Justice Gaudron and Mr Commission McCloghry) on 6 May 1974.

On 10 June 1974 the following order was made by the Commission:

Order and prescribe by consent:

That the above award be and the same is hereby varied in manner following that is to say:

I By deleting from the preamble the words 'Save and except clause 21—Annual leave— and clause 27—Hours—which are matters to be dealt with under section 31 of the above-mentioned Act'.

II The said variation shall come into operation as from the first pay period commencing on or after 26 February 1974 and shall remain in force until 30 June 1975.

[FERGUSON, J.]

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In re STANDARD HOURS—CARPENTER-DIVERS.

April 24.

In re BRIDGE AND WHARF CARPENTERS (STATE) AWARD
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Bridge and Wharf Carpenters (State) Award—Carpenter-Divers—Standard hours—Ordinary working hours—Public inquiry—Five-day working week—Mixed industries—Overtime—Applications for declaration as to ordinary working hours and for variation of award.

The Commission (Ferguson, J.), after public inquiry pursuant to the provisions of s. 64 (1) of the Industrial Arbitration Act, 1940-1946, determined and declared that as from the beginning of the first pay period after the 15th May, 1947, the ordinary working hours of carpenter-divers should not exceed 6 hours 36 minutes per day, Monday to Friday, both days inclusive.

His Honour also varied the Bridge and Wharf Carpenters (State) Award published 15th August, 1941 (62 I.G. 440), as varied, by providing for a five-day working week, except where employees are working in conjunction with a mixed enterprise in which a five and a half day week is worked, and for consequential alterations to the overtime provisions.

APPLICATIONS by Bridge and Wharf Carpenters' Union of Australia for declaration as to ordinary working hours and for variation of award.

Mr. B. M. Sheiles on behalf of the Bridge and Wharf Carpenters' Union of Australia.

Mr. P. Thomas on behalf of the Commissioner for Main Roads.

Mr. W. H. Duncan on behalf of the Maritime Services Board of New South Wales.

Mr. W. Long on behalf of the Department of Public Works.

Mr. O. Peters on behalf of the General Contractors' Association of New South Wales.

Mr. R. Harvey on behalf of the Colonial Sugar Refining Co. Ltd.

Mr. A. W. McNamara on behalf of the Australian Workers' Union.

Mr. R. S. Jackson on behalf of the Federated Shipwrights and Ship Constructors' Association of Australia, New South Wales Branch.

Mr. P. Barclay on behalf of the Building Workers' Industrial Union of Australia, New South Wales Branch.

FERGUSON, J.: An application was made to the Industrial Commission of New South Wales by the Bridge and Wharf Carpenters' Union of Australia, Industrial Union of Employees, for a further variation of the Bridge and Wharf Carpenters (State) Award published 15th August, 1941 (62 I.G. 440), as varied, which, in so far

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as not already dealt with by the Commission, made the following claims:—

2. Clause 3. Hours. Delete clause 3, Hours, substitute in lieu thereof the following clause.

3. Hours. The ordinary working hours shall not exceed 44 per week, to be worked 8 hours 48 minutes per day Monday to Friday, both days inclusive. Such hours shall be worked between the hours of 7.30 a.m. and noon, and between 12.42 p.m. and 5 p.m. Monday to Friday, both days inclusive:

Provided that by an agreement between an employer and the union secretary the working day may begin at 6.30 a.m. or at any other time between that hour and 7.30 a.m. and the working time shall then begin to run from the time so fixed and the meal break as from a time to be mutually arranged. Provided that where work affected by transport or tides is being carried out, an earlier or later starting and finishing time may be mutually agreed upon by the employer and the union secretary.

The ordinary working hours of a carpenter-diver shall not exceed six hours per day, Monday to Friday, both days inclusive. Starting time shall be at 7.30 a.m. Monday to Friday inclusive. Such agreements shall be notified by the employer to the Industrial Registrar as soon as possible thereafter.

3. Clause 7. Overtime. Delete paragraph 3, substitute in lieu thereof the following words:—

Where a carpenter diver has been employed on any class of work for six hours on any day, Monday to Friday inclusive, and is called upon to work in excess of his finishing time his rate shall then be double time based on an hourly rate of one-fifth of his daily rate. All time worked on Saturdays, Sundays or holidays shall be for six hours at double time.

As the second claim in the said application, if granted, called for a reduction in the ordinary working hours of carpenter-diver below the hours at present provided by the said award as varied, a public inquiry was opened by the Industrial Commission with a view to determining and declaring standard hours for carpenter-divers in the State (excluding the County of Yancowinna). By agreement of all parties the said public inquiry and the hearing of the said claim in respect of hours proceeded concurrently.

The Bridge and Wharf Carpenters (State) Award was interpreted with respect to the hours of carpenter-divers by an order of interpretation made 7th October, 1943 (71 I.G. 368). The terms of the order are as follows:—

“Upon the true meaning and intention of clause 3, Hours, and clause 4, Wages, of the said award published 15th August, 1941, as varied, the ordinary hours of work of carpenter-divers who are

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required to work the six days per week basis shall be 6 hours per day on each of the first five days of the week and 3 hours on Saturday for which the weekly rate of remuneration shall be six times the appropriate daily rate prescribed by the said award: Provided that if by arrangement between an employer and his employee the ordinary weekly hours, viz., 33 hours, are worked on the first five days of the week the weekly rate of remuneration shall be the same as if such work had been performed on the six days' basis."

On the same date the said award was further varied as follows:—

"1. Add to clause 3, Hours, of the said award published 15th August, 1941, after the words "six hours per day" appearing at the end of the last proviso, the words "unless an employer and his employees have arranged to work only on five days of the week, in which case the ordinary hours of a carpenter-diver shall not exceed six hours thirty-six minutes per day."

2. This variation which is by consent shall take effect from the commencement of the first pay period after the 7th day of October, 1943."

It will be seen from the above that where a five-day week is worked, as is the case generally at the present time, the ordinary hours of a carpenter-diver are not to exceed 6 hours 36 minutes per day; if the week is spread over six days, then the ordinary hours are six hours per day for the first five days and three hours on Saturday.

The fixation of standard hours below 44 per week for carpenter-divers and other divers. [see Labourers, General (State) Award (80 I.G. 466), clause 4, subclause (xvi)] is a recognition that the said class of employees is engaged on work prejudicial to health.

The question which now arises, however, is whether the present working period provided by the Bridge and Wharf Carpenters (State) Award, as amended, can be said to be a period which if worked is likely to result in prejudice to the health of the employees concerned. In other words, should their ordinary working week be shorter than 33 hours if worked on six days or if worked on 5 days 6 hours 36 minutes per day on each of the five days.

Reliance was placed by Mr. Sheiles, who appeared for the applicant union, on certain standards with respect to the time spent by a diver under water adopted after careful consideration by the Standards Association of Australia, known as the S.A.A. Code for work in compressed air. Similar standards with slight differences were adopted by the Department of Labour and Industry and Social Welfare in compiling draft regulations for work in compressed air intended to be promulgated under the Scaffolding and Lifts Act, 1912-1944 (but not yet gazetted). Both these documents were made exhibits in this case.

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For the purpose of the present judgment it will be sufficient if I confine my references to the Australian standard rules for work in compressed air of the Standards' Association of Australia.

In the compilation of the Standards' Association of Australia, maximum working periods for a diver covering various depths are set out on page 5. The working periods varied in a tabulation proceeding from 0 to 204 feet. As most of the diving for Government departments is performed at comparatively shallow depths, reference may usefully be made to the table 0-42 feet where the working period suggested is two periods of three hours, with fifteen minutes at surface after each one and a half hours. As the depth increases pressure becomes greater per square inch, and the working periods are decreased until at a depth 192-204 feet the working period allowed is only twelve minutes.

In the practice of the departments and under the provisions of the award a carpenter-diver when not engaged in diving work may be employed on other bridge and wharf carpentering work on the surface, but if he has performed any diving work on a particular day, *i.e.*, "has wet his head" as the phrase goes, his ordinary hours of work on that day are confined to six hours if he works on a six-day week basis, or six hours thirty-six minutes if employed on a five-day week basis.

It is important to note that the standards laid down by the said Association are not addressed to anything else than the maximum working periods proper to be observed at varying depths. "Working period," for the purpose of the tabulation is defined at the foot of page 5, as follows:—"Working period shall mean the time spent from the beginning of descent to the beginning of ascent."

The Association, therefore, has not dealt with the question now before the Commission, namely, what are the total hours of employment proper to be spent on the job by a carpenter-diver who is engaged in diving for periods not exceeding the said working periods during a working day.

An examination of the evidence will show that some time is necessarily spent before the "beginning of descent" in making ready, that is, donning the diving apparatus. After the first period of one and a half hours, assuming the diving is taking place in a depth of 42 feet or less, fifteen minutes must be spent on the surface. Assuming the two periods of three hours were spent in diving and were broken by a lunch hour, there would be two intervals of fifteen minutes for rest, one in the morning and one in the afternoon. Some time would also necessarily be spent after beginning the ascent. The total time spent in these various ways outside the working period, as defined at the foot of page 5, would amount to about one hour per day, if the whole day were spent in diving operations with the depth 0-42 feet.

It is obvious that if a carpenter-diver was employed up to a depth of 42 feet for two periods of three hours in any one day the thirty-six minutes' excess of ordinary time over six hours would be *insufficient*

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to cover the one hour additional necessary attendance and ancillary activities and the said rest pauses, so that if only ordinary hours of work are worked on each day, whether on a five-day footing or a six-day footing, the "working period" as defined would be considerably less in actual fact than the maximum so determined.

The employers concerned observe and are quite willing to be bound by the standards with reference to working periods at different depths adopted in its report by the Standards Association of Australia.

The question for the Industrial Commission is whether the present ordinary working hours are such as to make it probable that unless further reduced prejudice to the health of the employees concerned will take place. On the evidence before me I am not so satisfied. The inquiry and report by the Standards Association of Australia with reference to standard rules for work in compressed air, Part 2, Diving, does not enter upon the question as to what surface work in addition to the maximum working periods for diving at varying depths can properly be done on any working day by a carpenter-diver. It is conceivable that if the full maximum working period as a carpenter-diver had been worked on any particular day the energy or strength left to a carpenter-diver for other work might be so limited that it would be prejudicial to his health to attempt other work on the same day, but it is to be noted that the Association, in its tabulation, carefully excluded from the working period the time spent before the beginning of descent, the time occupied after the beginning of the ascent, and the rest periods of fifteen minutes after each one and a half hours. It has already been pointed out that the ordinary working day of six hours or six hours thirty minutes would not permit of the observance of the maximum working period of diving at depths varying from 0-42 feet, but would result in less time than six hours being spent as a "working period," as defined.

It is conceivable that as depth increases with corresponding increase of pressure, the observance of the "working periods" for varying depths set out in the said tabulation might make it unreasonable to require other work on the same day to the extent of the ordinary working day of a carpenter-diver from a diver who had performed the "working periods" mentioned. I have no information, however, with reference to the effects upon a diver who had performed diving at those deeper depths on a particular day in relation to the amount of work proper to be performed by him on the surface on the same day. I am unable, therefore, to make any finding with reference to this, and it is sufficient that liberty to apply be reserved to the Union.

I am of opinion, however, that the claim for a five-day working week should be granted. This is the basis upon which the industry is being worked, and is the condition provided in awards generally in the building trade. The introduction of the five-day working week in this industry was not seriously opposed by the employers appearing in this case.

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Mr. Harvey, however, who appeared for the Colonial Sugar Refining Co. Ltd., pointed out that some mixed industries observed a five and a half day week in general and that great inconvenience would arise if bridge and wharf carpenters' ordinary hours of employment were to be confined in those industries to five days, Monday to Friday, both days inclusive. A number of awards which make provision for a five-day working week contain an additional clause making special provision for mixed industries. One example is found in the Carpenters and Joiners (State) Award (76 I.G. 94), clause 1, Hours, subclause (i), which provides that the ordinary working hours shall not exceed forty-four per week to be worked 8 hours 48 minutes per day, Monday to Friday, both days inclusive. Subclause (ii) provides:—

“Where carpenters and joiners are employed in any industry (other than the building industry) which is subject to any award or industrial agreement covering various classes of employees engaged in that industry, the hours and working days of carpenters and joiners shall be those prescribed for the employees generally in that industry, in lieu of the hours prescribed by this award.”

I am of opinion that similar provision should be made in the award now under consideration. The clause suggested by Mr. Harvey is in the following form:—

“Provided that where employees covered by this award are working in conjunction with a mixed enterprise in which a five and a half day week is worked, then the ordinary hours may be eight hours per day between 7.30 a.m. and 5 p.m., Mondays to Fridays, inclusive, and four hours on Saturday between 7.30 a.m. and 12 noon.”

The award, therefore, will be further varied as follows:—

Delete clause 3, Hours, and substitute in lieu thereof the following clause:—

3. (a) Hours.—The ordinary hours of work shall not exceed forty-four per week, to be worked 8 hours 48 minutes per day, Monday to Friday, both days inclusive. Such hours shall, unless otherwise mutually agreed, be worked between the hours of 7.30 a.m. and noon, and between 12.42 p.m. and 5 p.m. Provided that by an agreement between an employer and his employees the working day may begin at 6.30 a.m. or at any other time between that hour and 7.30 a.m. and the working time shall then begin to run from the time so fixed and the meal break as from a time to be mutually arranged.

Provided further that where employees covered by this award are working in conjunction with a mixed enterprise in which a five and a half day week is worked then the

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ordinary hours may be eight hours per day between 7.30 a.m. and 5 p.m., Mondays to Fridays, inclusive, and four hours on Saturday between 7.30 a.m. and 12 noon.

Provided further that where work affected by transport or tides is being carried out, an earlier or later starting and finishing time may be mutually agreed upon by the employer and his employees.

The ordinary working hours of a carpenter-diver shall not exceed six hours thirty-six minutes per day, Monday to Friday, both days inclusive. Starting time shall be at 7.30 a.m. on those days subject to the provisions for mutual agreement mentioned above. A copy of all such agreements shall be furnished by the employer to the Industrial Registrar and the secretary of the said Union within seven days after entering into the same.

Having held the said public inquiry into the standard hours proper to be fixed for carpenter-divers the Industrial Commission determines and declares that the ordinary hours of work of carpenter-divers shall not exceed six hours thirty-six minutes per day, Monday to Friday, both days inclusive.

This declaration is made upon the basis: (a) That carpenter-divers will not be asked to work for longer periods in diving than those fixed as maximum by the Australian Standard Rules for work in compressed air, Part II, Diving, known as the S.A.A. Code for work in compressed air and only under the conditions of work contained in the said Code; and (b) that liberty to apply is hereby reserved to the Bridge and Wharf Carpenters' Union of Australia.

Passing now to the claim with respect to overtime of carpenter-diver, clause 7, Overtime, at present provides as follows: "Where a carpenter-diver is called upon to work in excess of six hours per day on work performed by a carpenter-diver his rate shall be time and a half based on an hourly rate of one-sixth of his daily rate."

The claim is: "Where a carpenter-diver has been employed on any class of work for six hours on any day, Monday to Friday, inclusive, and is called upon to work in excess of his finishing time his rate shall then be double time based on an hourly rate of one-fifth of his daily rate. All time worked on Saturdays, Sundays or holidays shall be for six hours at double time."

The present clause in the award had relation to the performance of the ordinary working hours under the award in *six days*. Under the variation of the award which the Commission proposes to make and which has already been indicated, the ordinary working hours of a carpenter-diver will be limited to 6 hours 36 minutes per day, Monday to Friday, both days inclusive. It seems to me to follow from this that a variation of paragraph 8. of clause 7, Overtime,

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is called for. The present paragraph 3 will therefore, subject to reference to the Chief Judge of the Commonwealth Court of Conciliation and Arbitration (see below), be deleted and a new paragraph 3 substituted as follows:—

“Where a carpenter-diver is called upon to work in excess of six hours thirty-six minutes per day on work performed by a carpenter-diver his rate shall be time and a half based on an hourly rate of one-sixth of his daily rate.”

Inasmuch as the ordinary working week will now be completed in five days, Monday to Friday, both days inclusive, it is necessary to make provision for work performed on Saturday by other than shift workers. The following further paragraphs will be added to clause 7:—

“Time worked by an employee not being a shift worker on Saturday (except in mixed enterprises in which a five and a half day week is worked) shall be paid for at the rate of time and a half until 12 noon, and double time thereafter.

Where employees covered by this award are working in conjunction with a mixed enterprise in which a five and a half day week is worked all time worked on Saturday before or after the usual hours shall be paid for at the rate of double time.”

These are the rates contained in the Carpenters and Joiners (State) Award (reprint 76 I.G. 94), and they seem to me to represent the standard established by awards in the building trade. Compare also in this connection Bricklayers and Tuckpointers (State) Award (reprint 76 I.G. 107), clause 7; and Plumbers and Gasfitters (State) Award (reprint 74 I.G. 353), clause 10.

As these proposed variations of the award with regard to overtime rates involve alterations in the rate of remuneration provided by the said award a preliminary hearing of the matter has been held by the Industrial Commission as an authority within the meaning of the National Security (Economic Organisation) Regulations as amended.

The Industrial Commission is of opinion that the grounds on which the alterations are sought provide *prima facie* evidence that the alterations mentioned in this judgment should be made, and pursuant to the said Regulations a statement will be forwarded to the Chief Judge of the Commonwealth Court of Conciliation and Arbitration.

The matter will stand over generally.

[When the matter came before His Honour on 15th May, 1947, the following additions were made to the draft award indicated above, and the award was made to have effect on and from the beginning of the first pay period after 15th May, 1947. The declaration was directed to have effect from the same date.]

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Add two further paragraphs to clause 7 as follows:—

Payment for work on Saturday shall be calculated in accordance with paragraph 3 hereof, with a minimum of four hours' pay or four hours' work.

Liberty is reserved to all parties to apply in respect of this last clause.

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[The order is published in 86 I.G. 668.]

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Can anyone explain why we've just been fkd with a pay cut to the award from 'Fair Work' Australia?

Was \$35.64 p/h and from 1 Jul 17 it's \$31.98.

The hell's going on with that? Since when do you go backwards in an award?

That's over a 10% pay cut! The award is worse than what it was 10 years ago!



22 Comments

Like Comment

I noticed that and posted the new award here a few weeks back but just a few people comment about it. don't know if enough people are aware of that. Rent go up, food price go up but less money for all of us. Can ADAS or anyone do something about it ?

Like Reply July 18 at 12:44pm

ADAS will have nothing to do with this side of it. I think it's more of a union issue.

Have a read of my other comments and I recommend you, and anyone else you know this affects, calls Fairwork.

Like Reply July 18 at 1:54pm

Yeah ADAS are primarily responsible for training and certification, not pay. As for the union- the MUA would be keen to help.... if more than a tiny fraction of inshore divers were actually members.

Like Reply July 18 at 3:49pm

Write a reply...



Divers aren't that flash with math I guess....

Like Reply 4 July 18 at 12:47pm

The award is 31 now? Ya right when I started it was 28, 9 years ago!

Like Reply July 18 at 1:17pm

know, right!

Like Reply July 18 at 1:26pm

Write a reply...



There was a change in what constitutes a working day from 6.5hrs a day to 38hrs a week also...

Like Reply 3 July 18 at 1:17pm

Set your individual hourly/day rate... (how much are you worth) or in my case (how good are you)!!!!!! Lol. Need to shut the schools down and push out them willing to undercut divers.

Like Reply 3 July 20 at 7:10am

View more replies

Write a reply



Rates are dropping across the board for everything - but i do agree that it is a load of bullshit. When someone doing a high risk skilled activity is getting paid less than a trade assistant on a shutdown theres a problem. I don't see it changing unless the demand outweighs the supply like it did a few years back. Unless your a Sat Diver or Offshore in Aussie, there are easier ways to earn a \$\$\$ if your not doing it for the pure love of it

Like Reply 3 July 20 at 10:56am · Edited

So what should we do about this guys

Like Reply July 21 at 2:46am

Stand together for once

Like Reply 1 July 21 at 4:26am

Time to pay dues I think... anyone know what the mua charges for an inshore diver for a year?

Like Reply 1 July 21 at 8:28am

Union dues are based on salary. Contact the union <http://www.mua.org.au/>



Maritime Union of Australia

MUA represents 16,000 Australian stevedores, seafarers, and other maritime workers and is...

MUA.ORG.AU

Like Reply Remove Preview 2 July 21 at 4:46pm

What do they do for divers?

Like Reply 1 July 22 at 6:11pm

Write a reply



so a 8 hour day is \$246 fuck me defently worth it . You only have to do 6 days and you might clear a grand ,

Like Reply 2 July 21 at 4:28am

[REDACTED] If you work for that is it not ya own fault?

Like Reply 3 July 18 at 7:31pm

[REDACTED] Write a reply .



[REDACTED] Like Reply July 18 at 4:04pm

[REDACTED] Yeah mate , I read this the other week .. shit hey !

Like Reply July 18 at 4:18pm

[REDACTED] Like Reply July 18 [REDACTED] 19pm

[View more replies](#)

[REDACTED] Write a reply ..



[REDACTED] so the politicians can have their pay rise this year, though it was decided by an independent tribunal sitting with only 2 members on board and those 2 members are on the board of coal and wealth management to mention just a few. Why would we not be suprised that all in sundry are being screwed,

Like Reply 1 July 18 at 6:06pm

[REDACTED] F

Like Reply July 18 at 7:30pm

[REDACTED] We all had the chance a few years ago to unite with the MUA and other representative bodies but we didn't and now we are all suffering the consequences of our inaction.

We should have all got together and agreed on an inshore and offshore agreement w... [See More](#)

Like Reply 6 July 18 at 8:12pm

[REDACTED] because the country we live in sucks

Like Reply 1 July 19 at 10:10am

[REDACTED] My rate is going up to minimum \$45ph take it or leave it. You should all do the same. Company's can not complete their contracts without us divers. Unless you think your only worth \$31ph And are happy to continue to constantly be forking out your \$31 to update your certs just to stay employed.....

Like Reply 8 July 19 at 3:10pm

[REDACTED] I agree but unfortunately, there will always be someone who is willing to work cheaper and undercut the rest , I guess like you said , take it or leave it , don't give a fuck either way

Like Reply 1 July 19 at 8:32pm

As a diving company owner I would totally join a union or association that would bring up the prices of wages. The simple fact is if wages are more and every one has to pay the same rate to divers companies would charge more making more money and the divers get what they deserve . I'm a civil diver and I would love to see the onshore wage of a diver be at least \$ 500.00 min 8 hours . This would totally be reasonable for divers in Australia . Not as much money as working offshore in Aus but it would be a good start. Let's face it there is a huge difference between onshore and off shore rates in Australia and I really don't know why this is....

Like Reply  4 · July 26 at 5:47pm

We can do this. Join the Australian divers association on FB

Like Reply  1 · July 26 at 6:06pm

I'll have a look.

Like Reply · July 26 at 6:22pm

Are you a union member?

Like Reply · July 26 at 7:24pm

Was

Like Reply · July 26 at 7:29pm

Well, you just made yourself the bad example in your statement.

Like Reply · July 26 at 7:32pm

Was and now starting the new movement. The Divers Association is one of the governing body's that has the ability to remove a IMCA title from a subsea company. Name 1 union that has that power here in Australia ?

Like Reply · July 26 at 7:35pm

EBA are free to read on fair work Australia if you google it. Freedom of information act

Like Reply · July 26 at 7:36pm

, frankly it surprises me you still find people willing to employ you.

Let's just lay off slugging out companies that either refuse to employ you or have run you off. Also, skyting about your pay rate isn't really what this initial thread was started for. It was to inform those currently employed within the industry as many were unaware.

Like Reply · July 26 at 7:41pm

Yes agreed, but are you not supporting the guys?

Like Reply · July 26 at 7:44pm

[REDACTED] All of the boys at [REDACTED] have sent letters asking for answers.

This was their reply:

Hi [REDACTED]

Re: Professional Diving Industry (Industrial) Award 2010 – Casual inshore diver pay rates

Thank you for your enquiry.

On the 9th of June 2017, the Fair Work Commission released their 4 yearly review of modern awards –Award stage –Group 1 (FWCFB 3177). After consultation with various industry bodies, the Commission decided that Clause 21.1 of the Industrial Diving Award will be varied as follows:

"21. Ordinary hours of work

21.1 Inshore divers

(a) The ordinary hours of work will not exceed 6 hours and 36 minutes per day 38 hours per week which may be worked between 6.00 am and 6.00 pm Monday to Friday."

Decision PR593669 varied the award as of 13 June 2017.

Effectively, this changes the calculation of the casual hourly rate for inshore divers from being based on a 33 hour week to being based on a 38 hour week. Thus, the casual rate of pay has decreased.

The weekly wage for inshore divers has increased (3.3%) in line with the annual wage review which affects all modern awards. This increase also affects casual pay rates.

Like · Reply ·  5 · July 18 at 2:53pm

[REDACTED] Effectively a lower hourly rate, longer working week and we should make more money. Dick heads

Like · Reply ·  3 · July 18 at 2:55pm

[REDACTED] Email or post? You have a link or address for the rest of us to get behind it?

Like · Reply · July 18 at 3:11pm

 View more replies

Write a reply



[REDACTED] Like · Reply · July 18 at 3:07pm

[REDACTED] Glad i got out when i did that is terrible money ..best sent your cv's to woolies or coles

Like · Reply ·  2 · July 18 at 4:54pm

There was an annual national wage review in June 2017 which increased wages nationally by 3.3% including all Awards.

As at 1 July 2016 the rate of pay for the classification of Inshore Diver was \$940.90/wk. Under the Divers Award casuals are paid 1/38th of their ordinary pay plus a 25% loading which means that the casual hourly rate for an Inshore Diver is \$30.95. A link to the 2016 rates of pay is below:

<https://www.fwc.gov.au/.../awardsandorders/html/pr579899.htm>

The pay scales in the Diving Award were varied on 21 June 2017 increasing all rates of pay by 3.3% effective 1 July 2017. Inshore Divers are now paid \$971.90/wk. A link to the variation is below:

<https://www.fwc.gov.au/.../awardsandorders/html/pr579899.htm>

Using the same formula for casuals the hourly rate of pay for a casual Inshore Diver is \$31.98 which is an increase

Like Reply July 21 at 4:44pm

So if this does not explain it can you please tell me what the issue is so we can have another look.

Like Reply 2 July 21 at 4:45pm

As a casual diver. How can we be judged on a weekly pay rate? No casual diver is guaranteed a full weeks work. When going off our hourly rate. (Which all casual work should) It is a 10% pay decrease.

Like Reply 3 July 21 at 4:50pm

The hourly award rate form 01/07/16 for an onshore diver was \$35.64, as of the first of July this year, its dropped to \$31.98

Like Reply 2 July 21 at 5:27pm

Did they take an average of what we earn in a week and then average that over 40 hours to get that figure?? I've seen guys get one day out of 4 weeks due to work being quite.

Like Reply July 21 at 6:15pm

Hi, I've had a bit of a chat but haven't gotten very far with Fairwork. What you're saying is what I've been told from them. The issue here is that the changes to the hours worked is out of touch with how our industry works. No one works a Monday-Frida... See More

Like Reply 2 July 21 at 6:27pm

As casuals you should also be paid for a full days work each day so calculations based on the weekly rate (which should simply be the normal day rate x5) ought to still be valid.

Like Reply July 22 at 8:21am

[REDACTED] I've been told companies have to pay you an allowance for wetsuits and other stuff every pay check. Which is stupid.

Like · Reply · July 22 at 7:24pm

[REDACTED] Diver welders come cheap these days, they got range rovers to pay for 🚗

Like · Reply · 🇺🇸 1 · July 26 at 5:06pm

Write a reply...



[REDACTED] Well guys as I see there is still no unity in the argument, I get \$65 an hour diving in shore as it is a casual job. If you do not agree with the circumstances of wage then refuse to work!!! Without unions and state plus federal government helping us it's now in our hands... what has this world come to as I get paid more working in town dry then wet and wondering when the next contract is coming up. We can all help each other if we get together and form a divers association in Australia 🇦🇺.

Like · Reply · 🇺🇸 3 · July 26 at 5:02pm

^ Hide 14 Replies

[REDACTED] Its hard to get everyone to stand together and reuse to work when we all have bills to pay and mouths to feed. We all need to send letter, make phone calls and push our arguments to the top to be heard..... joining the union, standing together will not keep us employed on higher rates. There will always be divers that are willing to work for less..

Like · Reply · 🇺🇸 1 · July 26 at 5:11pm

[REDACTED] If you are already working under these conditions you will not get what you are after or deserve. Say this to your boss, if I die today, will you call my partner and let her know that I was working for \$28 an hour in a dangerous job Snd i will not be coming home to see my children grow up. See if that hits home with him. You can all thank [REDACTED] for this, then [REDACTED] followed with there new EBA and now the government has followed. We have all been screwed by two men.

Like · Reply · 🇺🇸 1 · July 26 at 5:25pm

[REDACTED] Not a man till you've had a man. Thats makes us all men now then

Like · Reply · 🇺🇸 1 · July 26 at 5:42pm

[Redacted] Update.

I just spent a good while on the phone to Fairwork and was told that there was no reason why there is a wage decrease. He couldn't get an answer from anyone in the office and said that all other awards received a 3.5% increase in line with CPI. I was told that my question has been escalated and I'll be kept in the loop. I'll keep you all in the loop.

... it sounds like it's the first time it's been questioned and I'm wondering if some bell end put a minus instead of a plus!

Like · Reply ·  24 · July 18 at 1:24pm

[Redacted] Following closely


Like · Reply ·  2 · July 18 at 2:02pm

[Redacted]
Like · Reply ·  1 · July 18 at 2:47pm

[Redacted] Write a reply...



[Redacted] It might pay for all of you lads to ring them up as well! If they start getting swamped by calls from divers maybe it'll be looked at quicker!

Like · Reply ·  12 · July 18 at 1:27pm

[Redacted] What's the number

Like · Reply ·  2 · July 18 at 2:59pm

[Redacted]
Like · Reply · July 18 at 3:01pm

[Redacted] Write a reply...



[Redacted]
Like · Reply · July 18 at 1:45pm

[Redacted] Absolute joke!

Like · Reply ·  1 · July 18 at 2:04pm

[Redacted] Write a reply...

