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Our Ref:NK:TM:1409017

Associate to the Hon Justice Ross AO

Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

By email: chambers.ross.j@fwc.com.au; amod@fwc.gov.au

Dear Associate

**RE: 4 YEARLY REVIEW – PORTS, HARBOURS AND ENCLOSED WATER
VESSELS AWARD 2010
AM2014/241**

We are the solicitors for the Maritime Union of Australia.

We refer to the conference before his Honour on 4 August 2016. In that conference we agreed to provide the Commission we further submissions in relation to two changes to the exposure draft proposed by our client. These changes relate to clauses 10.1(p)(iii) and 12.2 of the exposure draft.

Clause 10.1(p)(iii) - Towing allowance

This clause is sourced from clause 4.1.2 of Part 3 of the Port Services Award (AP792489). That clause provided:

4.1.2 employees on vessels proceeding beyond the limits of Port Jackson or Port Philip Bay shall whilst so engaged be paid at the wage rates prescribed with an additional amount of 25 per cent with a minimum payment for four hours.

The wage rates prescribed were set out in clause 3.1.1 of that award and were described as base rates. In other words the rate of pay before loadings, penalties, overtime etc.

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Clause 10.1(p)(iii) is in these terms:

employees on vessels proceeding beyond the limits of a harbour, river or bay will whilst so engaged be paid their normal wage plus an allowance of 25% of their normal wage for each day with a minimum payment for four hours.

The words "normal wage" are not defined in the exposure draft.

We propose that the words "normal wage" be replaced by the words "ordinary hourly rate" in both places. This would align with the terms of the pre reform award and adopt language that is consistent with the manner in which minimum wages are expressed in clause 9.

Clause 12.2 – work on weekends

The exposure draft lacks clarity as to the rate of pay for an employee working on the weekend. The exposure draft provides for a span of ordinary hours as follows:

Ordinary Hours may be worked between 6.00am and 6.00pm for up to 8 hours per day, Monday to Friday inclusive. (clause 7.2)

It also provides for an entitlement to overtime in clause 12.1 as follows:

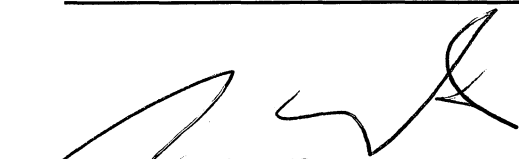
Overtime is payable to employees for any time worked outside of ordinary hours on a Monday to Friday (except a public holiday)

Clause 12.2 is clear as to how overtime is to be paid Monday to Friday – time and a half for the first 3 hours, double time thereafter. We propose that all hours on a Saturday be paid at time and a half, all hours on a Sunday be double time and all hours on a public holiday be paid at double time and a half. This was the intent behind the clause originally suggested by the Maritime Union of Australia when the modern award was made. Accordingly we propose the clause be amended to read:

12.2 Employees will be paid the following rates

		% of ordinary hourly rate
Overtime		
Monday to Friday	First three hours	150
	After three hours	200
Weekend and Public Holidays		
Saturday		150
Sunday		200
Public holiday		250

Yours faithfully,
W G McNALLY JONES STAFF

A handwritten signature in black ink, appearing to read 'Nathan Keats', written over a horizontal line.

NATHAN KEATS
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