

## IN THE FAIR WORK COMMISSION

Matter No: AM2016/5 Substantive Issues in:

**Ports Harbours and Enclosed Water Vessels Award 2010  
Seagoing Industry Award 2010  
Marine Towage Award 2010**

**4 YEARLY REVIEW OF MODERN AWARDS – s156**

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### OUTLINE OF SUBMISSIONS IN RESPONSE ON BEHALF OF MARITIME INDUSTRY AUSTRALIA LTD

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#### Introduction

1. Maritime Industry Australia Ltd. (MIAL) represents employers of employees who are involved in the maritime industry and relevantly covered by the following modern awards that are the subject of this proceedings:

- a) Marine Towage Award 2010 (MTA)
- b) Seagoing Industry Award 2010 (SIA)
- c) Ports, Harbours and Enclosed Water Vessels Award 2010 (PHEWV Award)

2. On 23 May 2016 Vice President Watson issued amended directions in relation to this matter. The following submissions are provided in response to applications to vary the above modern awards, lodged on behalf of Sea Swift Pty Ltd and dated 12 April 2016 (Sea Swift draft determinations) and 15 April 2016 (Sea Swift submissions) and the Australian Institute of Marine and Power Engineers (AIMPE) dated 10 May 2016 effecting the PHEWV Award (PHEWV Award AIMPE submission) and the SIA (SIA AIMPE submission).

#### **The context of the four yearly review and any proposal to vary a modern award**

3. MIAL notes the Full Bench decision [2014] FWCFB 1788 addressing Preliminary Jurisdictional Issues (Preliminary decision) paragraph [60] *“The need for a “stable” modern awards system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances.”*

4. The Preliminary decision, later in paragraph [60], goes on to state:

*“In conducting the Review the Commission will also have regard for the historical context applicable to each modern award and will take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed in the absence of cogent reasons for not doing so. The Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time it was made.”*

5. MIAL submits that in order to vary modern awards, the Commission must be satisfied that the party proposing the change has presented submissions and evidence that the proposed variations are necessary to meet the modern award objectives in accordance with s138 of the *Fair Work Act 2009* (FW Act) in relation to each award to which the change is proposed.

### **Seagoing Industry Award**

6. The Sea Swift submission in combination with the Sea Swift draft determination seeks three substantive changes to the existing SIA. The first is the amendment of existing coverage provisions within the SIA at clause 3.5(d) which will remove reference to the MTA and PHEWV Award (coverage amendment). The second is the inclusion/reintroduction of a specific category of casual employee into the SIA (casual amendment). The third relates to the introduction of a category of vessels up to 5000 tonnes to reflect the diversity of the size of vessels which are covered by the SIA, which is not currently reflected in the existing categories (vessel category amendment).
7. The SIA AIMPE submission seeks two substantive changes to the SIA. The first is not dissimilar in principal to the vessel category amendment in that AIMPE seeks to introduce what is described as a small ships schedule for vessels up to and including 6000 tonnes (small ships amendment). The second relates to the introduction of additional classifications of Electrician/ Electro Technical Officer within each vessel category described in Part 4 wages and allowances (classification amendment).

*Vessel category amendment/ small ships amendment*

8. MIAL supports the introduction of a category of vessels within the SIA which properly reflects the size of vessels covered by the SIA. Both the AIMPE SIA submission and the Sea Swift submission highlight the anomaly of having the smallest category of seagoing dry cargo vessels up to 19,000 tonnes (see clause 10.1(a)). This has been exacerbated by the termination of the pre-reform *Self-Propelled Barges and Small Ships Award 2001 (SBSS Award)* and other pre-reform awards which applied to vessels which operated in coastal waters. Paragraphs 15-21 of the AIMPE SIA submission and paragraphs 51-60 of the Sea Swift submission highlight that a recent full bench decision in the *Maritime Union of Australia and Others v Sea Swift [2016] FWCFB* (MUA decision) has clarified the coverage of the SIA and altered a previous industry understanding of the interaction of the PHEWV Award and the SIA.
9. As part of the Part 10A Award modernisation process, AIMPE (jointly with the Maritime Union of Australia (MUA)) made a number of submissions for the making of the PHEWV Award including the pre-form awards that were considered in the making of the modern award. This includes consideration of the SBSS Award (clauses within which were not considered on the basis that Perkins Shipping Group was the only respondent) and other awards which purport to have been replaced by the PHEWV Award. Those submissions are attached at Annex 1 to these submissions<sup>1</sup>.
10. Apart from the SBSS Award, a number of other awards which were purportedly replaced by the PHEWV Award covered vessels which in the course of their work proceeded to sea. For example, the *Shipping Award AN170095* contemplated coverage of intra-state and coastal vessels under division C of that award. It was also contemplated in a paragraph headed Ports Harbours and Enclosed Water Vessels Award 2010 in a submission on behalf of the MUA and AIMPE attached at Annex 2 that some vessels which did proceed to sea fitted more comfortably within the PHEWV Award than the SIA<sup>2</sup>.
11. The Award modernisation proceedings undertaken by the Australian Industrial Relations Commission reveal that the SIA largely replicated the terms of the *Maritime Industry Seagoing Award 1999 (MISA)* and did not consider the terms of other pre-reform awards. This may well have led to the industry confusion about the application of the SIA and the

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<sup>1</sup> Submissions of Maritime Union of Australia and Australian Institute of Marine and Power Engineers dated 6 March 2009.

<sup>2</sup> Submissions of Maritime Union of Australia and Australian Institute of Marine and Power Engineers dated 18 March 2009, p2.

PHEWV Award which the AIMPE articulates in paragraph 17 of the AIMPE SIA submission.

12. In these circumstances it appears that a failure of the SIA to accommodate the types of vessels that were covered by the SBSS Award and other pre-form awards that contemplated vessels carrying cargo at sea which had operated alongside the MISA prior to the Part 10A award modernisation process has led to an outcome that is inconsistent with the modern award objectives. It is opportune, as part of the four yearly review, that this be rectified.
13. MIAL notes a number of principles arising from chapter 2 of the Full Bench decision [2015] FWCFB 3406 on 11 June 2015 in relation to the annual leave common claims advanced by the joint employer organisations and the ACTU, as follows:
  - a) The modern awards objective is central to the Review (paragraph [16]);
  - b) The broad scope of the four yearly review does not obviate the need for a merit argument to be advanced in support of a proposed variation (paragraph [22]);
  - c) Proposals to vary a modern award must demonstrate that if the modern award is varied in the manner proposed then it would only include terms to the extent necessary to achieve the modern awards objective (paragraph [23]).
14. MIAL submits that the proposed variation satisfies the modern awards objectives set out in s134(1) of the FW Act, in particular with regard to the likely impact on business, including on productivity, employment costs and the regulatory burden (s134(1)(f)). As set out in the Sea Swift submissions and the AIMPE SIA submission, industry participants held a view as to the type of ships covered by the SIA. The context of the Part 10A award modernisation proceedings and the pre-reform awards that had purported to be replaced by the PHEWV Award demonstrated that it was a view not unreasonably held. In light of the clarification provided by the MUA decision, the proposed variation is consistent with the modern award objectives and in particular s134(1)(f), s134(1)(g) and s134(1)(h) of the FW Act.
15. The merit arguments by both Sea Swift and AIMPE support the proposed variation. Subject to the parties' submissions as to the detail of the proposal in terms of vessel tonnage and appropriate rates, the variation is necessary to meet the modern awards objectives.

*The casual amendment*

16. MIAL notes the comments of Sea Swift in relation to the reference to casual employees under the SIA and supports the reintroduction of this category of employees. MIAL understands that casual/relief employment is a feature of the current industry covered by the SIA and it is appropriate for this to be reflected in any modern award covered by that industry.

*The coverage amendment*

17. The proposal contained in the Sea Swift submissions purports to rectify an anomaly which has arisen from clarification of the current coverage provision of the SIA in the MUA decision. The effect this decision, as confirmed in the decision of Commissioner Simpson in *Sea Swift Pty Ltd T/A Sea Swift v the Maritime Union of Australia and others [2016] FWC 1882* is that the SIA is the appropriate award for all of its marine operations. It appears that even where particular operations may more appropriately be covered by a separate industry award, the SIA applies to employees of an employer who is found to be engaged in the seagoing industry.

18. The Full Bench in its Award modernisation decision *[2008] AIRCFB 1000* identified that the question of overlapping coverage ought be determined by reference to the following draft clause:

*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. [at paragraph 30].*

19. This clause is replicated in clause 3.6 of the SIA. It appears as though the intent of this provision was that the work performed by the employee be the determining factor for appropriate award coverage rather than the industry which the employer is involved in, which, in the case of marine contractors operating a variety of different vessels could span across many awards.

20. MIAL submits that where an employer engages persons to work on vessels that clearly come within the coverage of an industry award, it is this award that should be applied to

the terms and conditions of employment of that employee, regardless of whether the employer could be said to be involved in an industry to which a different award applies. This is consistent with the principal of equal remuneration for work of equal or comparable value, a modern award objective set out in s134(1)(e) of the FW Act.

21. We note that the Sea Swift draft determinations contain complementary variations to the MTA and the PHEWV Award, which will be necessary and appropriate if the Full Bench accepts the variation to the SIA proposed by Sea Swift and consistent with the modern award objectives, in particular the need to ensure a simple, easy to understand, stable and sustainable award system for Australia that avoids unnecessary overlap of modern awards at s134(1)(g) of the FW Act.

#### *Classification amendment*

22. AIMPE has proposed to insert new classification definitions within the SIA which address the role of Electrician and Electro-Technical Officer.
23. MIAL does not oppose the inclusion of a new classification of Electro-Technical Officer. This is a classification that is contemplated under the *Navigation Act 2012* and *Marine Order 72*. MIAL opposes the suggested grading of this classification at the level of second engineer and second mate and supports the position adopted by CSL Australia in its correspondence dated 24 September 2015.
24. Previously parties have opposed the inclusion of tradespeople whose employment was covered by other industry awards (such as the *Electrical, Electronic and Communications Contracting Award 2010*) and who are not typically considered to form part of the traditional marine crew. MIAL (at that time the association was called the Australian Shipowners Association) made submissions that tradespeople should not be included in the classifications in the SIA during the award modernisation process.<sup>3</sup> MIAL remains of that view.

#### **Ports Harbours and Enclosed Water Vessel Award**

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<sup>3</sup> Submission dated 15 June 2009 on behalf of the Australian Mines and Metals Association and the Australian Shipowners Association in response to exposure draft of the Seagoing Industry Award 2010 and the Maritime Offshore Oil and Gas Award 2010.

25. The AIMPE submission proposes to increase the wage rate contained in the PHEWV Award for the classification of engineer and in the alternative introduce a new classification of chief engineer (which would currently fall within the classification of engineer) (the wage submission). MIAL opposes the wage submission.
26. According to s156(3) of the FW Act, the Fair Work Commission (FWC) may make a determination varying modern award minimum wages only if the FWC is satisfied that the variation of modern award minimum wages is justified by work value reasons. The wage submission identifies a number of pre-reform modern awards and the various relativities contained within them to determine an average relativity across all the pre-reform modern awards which were purportedly replaced by the PHEWV (see AIMPE 1). The submission does not in MIAL's view contain a merit based work value argument as to why the classification of Engineer should receive the same minimum wage as that of Master.
27. In award modernisation decision issued on 4 September 2009 by the Australian Industrial Relations Commission<sup>4</sup> it was recognised that vessels covered by the PHEWV Award would venture beyond ports and harbours, and in fact some additional words were added to the coverage provision to make this abundantly clear.
28. A feature of the maritime industry is that the maritime safety regulator, the Australian Maritime Safety Authority (AMSA), under the auspicious of either the *Navigation Act 2012* or the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, may issue a document specifying the crewing for vessels including those which would be covered by the PHEWV Award. Depending on the size of the vessel and its area of operation there may be many persons working on board a vessel, all of whom are responsible to the Master of the vessel. Further, the Master is principally liable for a range of offenses under various legislation relating to safety and marine pollution.
29. A wide range of vessel are potentially covered by the PHEWV Award. The AIMPE submission does not address the basis on which Engineers under all vessels covered by the PHEWV Award should be entitled to the same minimum rate of pay as the Master. During the Award modernisation proceedings, it was acknowledged that the making of the PHEWV Award would have a significant impact on employers covered by the *Motor Ferries State Award* and the *Wire Drawn Ferries (State) Award* in terms of minimum rates, but on

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<sup>4</sup> [2009] AIRCFB 826 at paragraph 219

balance the Full Bench decided the rates made were more representative of minimum rate prescriptions and that transitional arrangements will ameliorate the impact to some extent.<sup>5</sup>

30. Any wage increase to the engineer classification will further impact employers who, as acknowledged by the Full Bench during the finalisation of the PHEWV Award during the award modernisation process, were subject to increased minimum wages to that which has applied to their businesses at the time the PHEWV Award was made. Such a variation, in addition to not meeting the tests set out in s156(3) of the FW Act, would be inconsistent with the modern award objectives as set out below.

- a) Any increase in the minimum safety net within the PHEWV Award which disturbs existing relativities between employees discourages the need to collectively bargain and runs contrary s134(1)(b) of the FW Act. Given the broad range of operations which potentially fall with the industry covered by the PHEWV Award, where certain operations, based on work value reasons justify the increase of an engineer's pay to the equivalent of that of a master, this can and should be the subject of collective bargaining. It will not be the case that these reasons can be made out for every such operation.
- b) Any change to the established relativities which result in an increase in the minimum wage will, directly, result in an increase in employment costs. The Full Bench must take into account the likely impact of the exercise of a power to increase minimum rates in the PHEWV Award on business, including productivity, employment costs and the regulatory burden (s134(1)(f) of the FW Act).
- c) Increase in costs for businesses operating under the PHEWV Award are likely to have an adverse impact on growth, inflation and the sustainability, performance and competitive of the national economy contrary to s134(1)(h) of the FW Act. The diversity of businesses that are covered by the PHEWV Act and the fact that they may operate in a wide range of geographical locations around Australia means that increase business costs may have significant impacts on smaller business operating in regional areas, with flow on effects of job losses and impact on the economy of the local community. Such a variation

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<sup>5</sup> Ibid at paragraph 221



would likely have similar consequences on a number of remote and regional communities.

31. MIAL does not agree that the wage structure currently contained in the PHEWV Award was an anomaly. The consideration of the Full Bench described in paragraph 29 above indicates that the wages set were intended to contain the relativity which they currently contain. The AIMPE wage submission has not met the requirements of s156(3) or s138 and accordingly the proposed variation should not be made.

**Submitted on behalf of**

Maritime Industry Australia Ltd.

10 June 2016

# W.G. McNALLY JONES STAFF

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6 March 2009

Our Ref:WGMc:NK:TM:901019

The Industrial Registrar  
Australian Industrial Relations Commission  
GPO Box 1994  
MELBOURNE VIC 3000

By email: [amod@air.gov.au](mailto:amod@air.gov.au)

Dear Registrar,

**RE: PORT HARBOUR AND ENCLOSED WATER VESSELS AWARD 2010  
AM2008/49 and AM2008/41**

We are the lawyers for the Maritime Union of Australia and the Australian Institute of Marine and Power Engineers.

We enclose our submissions for the making of a modern award known as the "Port Harbour and Enclosed Water Vessels Award 2010".

We will be attending the public consultations on 19 and 27 March 2009.

Yours faithfully,

**W.G. McNALLY JONES STAFF**

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Entitled to practice in New South Wales, Victoria, Queensland, South Australia, Western Australia, the Australian Capital Territory and any federal court in Australia.

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**AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

*Workplace Relations Act 1996*

**Award Modernisation**

**Port and Harbour Services**

(AM2008/49)

**Maritime**

(AM2008/41)

**SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA**

**AND**

**THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS**

**IN SUPPORT OF THE MAKING OF THE**

**PORT HARBOUR AND ENCLOSED WATER VESSELS AWARD 2010**

**Introduction**

1. It is submitted that the Commission should make the Port Harbour and Enclosed Water Vessels Award 2010 in accordance with attachment "A" to these submissions. ("Modern Award")

2. **Coverage**

This Modern Award is expressed to cover employers in the Port, Harbour and Enclosed Water Vessels Industry and their employees. The industry is defined as "employers engaged in or in connection with vessels."

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## 3. The award replaces the following instruments:

<b>AIRC Industry</b>	<b>Publication Title</b>	<b>Pub ID</b>
Port and harbour services	Port Services Award 1998	AP792489
Maritime industry	Ketches & Schooners Award	AN150068
Maritime industry	Shipping Award	AN170095
Port and harbour services	Deckhands (Passenger Ferries, Launches and Barges) Award	AN160097
Port and harbour services	Masters, Mates and Engineers Passenger Ferries Award	AN160199
Port and harbour services	Marine Charter Vessels (State) Award	AN120330
Port and harbour services	Motor Boats and Small Tugs (State) Award	AN120350
Port and harbour services	Motor Ferries State Award	AN120351
Port and harbour services	Wire Drawn Ferries (State) Award	AN120650
Port and harbour services	Masters and Engineers' Award - Port of Brisbane 2003	AN140164
Port and harbour services	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under -	AN140165

	State (Excluding The Port of Brisbane ) 2003	
Port and harbour services	Port Authorities Award - State 2003	AN140213
Public Transport Industry	Stradbroke Ferries Pty Ltd Enterprise Award 2005	AN140280
Tourism industry	Whitsunday Charter Boat Industry Interim Award - State 2005	AN140315
Maritime industry	Maritime Award - Brisbane River and Moreton Bay 2003	AN140163
Maritime industry	North Queensland Boating Operators Employees Award - State 2003	AN140190

4. We have not included in this modern award:
- a. Provisions contained in pre-reform enterprise awards (including NAPSAs).
  - b. Provisions contained in long service leave awards;
  - c. Provisions contained in Victorian minimum wage orders;
  - d. Provisions contained in superannuation awards.
  - e. In AM2008/49 we have sought a modern award known as "Dredging Industry Award 2010." The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:
    - i) Dredging Industry (AWU) Award 1998 – AP778702
    - ii) Marine Engineers (Non Propelled) Dredge Award 1998 – AP788027

iii) Maritime Industry Dredging Award 1998 – AP787991

f. In AM2008/49 we have sought a modern award known as “Tug Industry Award 2010.” The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Tug and Barge Industry (Interim) Award 2002 – AP824200

ii) Tug Boat Industry Award 1999 – AP799111

g. In AM2008/41 we have also sought a modern award known as “Seagoing Industry Award 2010” The provisions contained the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Maritime Industry Seagoing Award 1999 – AP788080

h. In AM2008/49 we have sought a modern award known as “Port Authorities and Port Construction Award 2010.” The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Maritime Union of Australia (Ship Services) Award 2002 AP816677

ii) New South Wales Port Corporations Award 1999 AP791641

iii) Ports of Victoria Consolidated Administration Award 1998 - AP792487

iv) Queensland Regional Port Authorities and Corporations Employees Interim Award 2000 - AP794137

v) Regional Port Authority Officers' (Queensland) Award 1999 - AP794800

vi) Tasmanian Ports Corporations Award 2002 - AP819542

vii) Victorian Port and Harbour Services Consolidated Operational Award  
1998 AP802100

i. In AM2008/49 we have sought a modern award known as “Stevedoring Industry Award 2010.” The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Stevedoring Australian Vocational Training System Award 2000 -  
AP796383

ii) Stevedoring Industry Award 1999 - AP796113

j. In AM2008/49 we have sought a modern award known as “Port Authorities and Port Construction Award 20.” The provisions in the following NAPSAs have been incorporated into that award rather than this modern award

i) Port Stanvac Award AN160199

ii) Marine Stores Award AN160199

5. We have not included the Self-Propelled Barge and Small Ships Industry Award 2001 which is referred to in the Full Bench Statement dated 30 January 2009 for the Maritime Industry. It only applies to Perkins Shipping Group;
6. We have not included the Bulk Terminals Award - State 2003 - AN140048 which is referred to in the Full Bench Statement dated 30 January 2009 for the Port and Harbour Services Industry as it only applies to Queensland Sugar Limited;

**Terms of the Modern award**

7. 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	AIRC template

Clause 3 – Definitions and interpretation	<ol style="list-style-type: none"> <li>1. Definitions of Act, employee, employer, enterprise award and NES are from the AIRC template;</li> <li>2. Definitions of Bunker Barge, Shipkeeper, Small Tug and Winch Driver are from clause 2 of the Motor Boats and Small Tugs(State) Award</li> <li>3. Definitions of Ferry Engine Driver are from clause 2 of the Wire Drawn Ferries (State) Award.</li> <li>4. Definitions of Non self-propelled bunker barge, and Self-propelled bunker barge are from clause 5 of the Port Services Award 1998</li> <li>5. Definitions of Port and Vessel are from the Navigation Act 1912.</li> </ol>
Clause 4-coverage of the award	New clause
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	New clause with casual loading set at 25%.
Clause 11 – Employer and employee duties	New clause
Clause 12 – termination of employment	<ol style="list-style-type: none"> <li>1. Used the model clause.</li> <li>2. Return to place of engagement added from: <ol style="list-style-type: none"> <li>a. Master and Engineers' Award - Port of Brisbane 2003</li> <li>b. masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane ) 2003</li> </ol> </li> </ol>
Clause 13 – redundancy	Model provision
Clause 14 – minimum	From Part B of Motor Boats and Small Tugs (State) Award except



wages	for the classification of master which is from the Port Services Award
Clause 16 – Allowances	<ol style="list-style-type: none"> <li>1. Clause 16.1 is from clause 10.5 of Masters and Engineers' Award - Port of Brisbane 2003</li> <li>2. Clause 16.2 is from clause 8.7.1 of Motor Boats and Small Tugs (State) Award</li> <li>3. Clause 16.3 is from clause 14 of the Shipping Award</li> <li>4. Clause 16.4 is from clause 11.4 of the Port Services Award</li> <li>5. Clause 16.5 is from clause 15 of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>6. Clause 16.6 is derived from clause 14 of Marine Charter Vessels (State) Award</li> <li>7. Clause 16.7 is from clause 11.2 of Port Services Award</li> <li>8. Clause 16.8 is from clause 4.1.1 of Part 5 of Port Services Award combined with clause 18.5 of Motor Boats and Small Tugs (State) Award</li> <li>9. Clause 16.9 is from clause 9 of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>10. Clause 16.10 is from clause 4(3) of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>11. Clause 16.11 is from clause 4(4) of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>12. Clause 16.12 is from clause 4(5) of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>13. Clause 16.13 is from clause 34(a) of the Shipping Award</li> <li>14. Clause 16.14 is from clause 15(1) of the Masters, Mates and Engineers Passenger Ferries Award</li> <li>15. Clause 16.16 is from clause 8.2 of Part 2 of Port Services Award</li> <li>16. Clause 16.16 is from clause 5.3.2 of Masters, Mates And Engineers' Award, Motor Vessels 2500 B.H.P./1866 kW.B.P. and under - State (Excluding the Port Of Brisbane) 2003</li> <li>17. Clause 16.17 is from clause 9.2 of Wire Drawn Ferries Award</li> <li>18. Clause 16.18 is from clause 13 of Motor Boats And Small Tugs (State) Award</li> <li>19. Clause 16.19 is from clause 10.4 of North Queensland Boating Operators Employees Award - State 2003</li> <li>20. Clause 16.20 is from clause 4.1 of Part 3 of Port Services Award</li> <li>21. Clause 16.21 is from clause 48 of the Shipping Award</li> <li>22. Clause 16.22 is from clause 4.6 of Part 3 of Port Services Award.</li> <li>23. Clause 16.23 is from clause 4.7 of Part 3 of Port Services Award.</li> </ol>

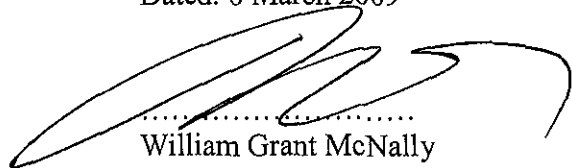
	<p>24. Clause 16.24 is from clause 4.8 of Part 3 of Port Services Award.</p> <p>25. Clause 16.25 is from clause 5.3 of North Queensland Boating Operators Employees Award - State 2003</p> <p>26. Clause 16.26 is from clause 8.1 of North Queensland Boating Operators Employees Award - State 2003</p>
Clause 16 – Mixed function	New
Clause 17 – Payment of wages	New
Clause 18 - Superannuation	Model clause
Clause 19 – ordinary hours of work and rostering	<p>NES supplemented by</p> <ol style="list-style-type: none"> <li>1. Clause 19.2 from clause 6.1 of Masters and Engineers' Award - Port of Brisbane 2003 – span on hours</li> <li>2. Clause 19.4 is based on clause 6 of Deckhands (Passenger Ferries, Launches and Barges) Award – avoidance of physical exhaustion</li> </ol>
Clause 20 - breaks	New clause
Clause 21 – Overtime and penalty rates	New Clause
Clause 22 - shiftwork	New Clause
Clause 23 – annual leave	<p>NES supplemented by</p> <ol style="list-style-type: none"> <li>1. Adding a loading of 17.5% except for shift workers (20%) from Motor Boats and Small Tugs (State) Award.</li> </ol>
Clause 24 – Personal/carer's and compassionate leave	Cross references the relevant NES.
Clause 25 – Community Service leave	Cross references the relevant NES.
Clause 26 – public holidays	Cross references the relevant NES and inserted a rate of pay for work on public holidays.
Clause 27 – Accident pay	Model provision.

## Conclusion

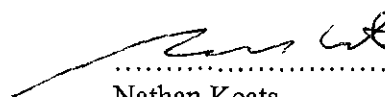
8. We submit that the Port Harbour and Enclosed Water Vessels Award 2010 should be made.

9. Bill McNally and Nathan Keats will attend the public consultations on 19 and 27 March 2009 to answer questions and make submissions in relation to draft awards proposed by other interested organisations.

Dated: 6 March 2009



.....  
William Grant McNally  
Solicitor for the Maritime Union of Australian



.....  
Nathan Keats

**Port Harbour and Enclosed Water Vessels Award 2010**

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## Part 1—Application and Operation

### 1. Title

This award is the *Port Harbour and Enclosed Water Vessels 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 *Workplace Relations Act 1996* (Cth).

**Bunker Barge** is a self propelled or non self propelled vessel which is normally used in the carriage of bulk liquid cargoes for the purpose of bunkering.

**Day** means the 24 hours from midnight to midnight

**employee** has the meaning in the Act

**employer** has the meaning in the Act

**enterprise award** has the meaning in the Act

**Ferry Engine Driver** shall mean the employee who operates the ferry in a single crew operation and shall be the driver in a more than one crew operation.

**NES** means National Employment Standards

**Non self-propelled bunker barge** is a vessel which has no propulsion machinery and which is normally used in the carriage of bulk liquid cargoes for the purpose of bunkering.

**Port** includes a place and a harbour

**Self-propelled bunker barge** means a vessel propelled by its own power and normally used in the carriage of bulk liquid cargoes for the purpose of bunkering.

**Ship** means any vessel intended or used for navigating the water.

**Shipkeeper** shall mean any person engaged in mooring, pumping or looking after any Lighter, Hopper, Winch Punt or Tug.

**Small Tug** means any vessel in the small tug industry being used exclusively for towing hoppers, barges, punts, logs or any floating material or vessel.

**Standard rate** means the minimum wage for a General Purpose Hand in clause 14.

**Vessel** means any kind of vessel used in navigation other than air navigation and includes a barge, lighter or like vessel.

**Winch Driver** is any person engaged in driving a winch on a Winch Punt or Crane Lighter.

- 3.2 Where this award refers to a condition of employment provided for in the NES the reference is to the condition as defined in the NES.

#### **4. Coverage**

- 4.1 This industry award covers employers in the Port, Harbour and Enclosed Waters Vessels Industry and their employees in the classifications within Schedule A to the exclusion of any other modern award. The award does not cover employers in the following industries:

- (a) Offshore Oil & Gas;
- (b) Seagoing;
- (c) Port Authority and Port Construction;
- (d) Dredging;
- (e) Stevedoring; and
- (f) Tug;

- 4.2 The award does not cover an employee excluded from award coverage by the Act.

- 4.3 The award does not cover an employer bound by an enterprise award with respect to any employee who is covered by the enterprise award.

- 4.4 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.

- 4.5 For the purpose of clause 4.1, **Port, Harbour and Enclosed Waters Vessels Industry** means employers engaged in or in connection with vessels.

#### **5. Access to the award**

- 5.1 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 combine to form the minimum conditions of employment for employees to whom this award applies.

**7. Award flexibility**

**7.1** 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 of 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 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.
- 7.8 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 Employers 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 effect** include termination of employment, major changes in 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 provisions for alteration of any of the matters referred to herein an alteration is deemed to not have significant effect.

#### **8.2 Employers 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 of this award and the effects the changes are likely to have on employees, 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 change.
- (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 of this award.

- 8.3 For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives 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 in relation to a matter arising under this award, or the NES, in the first instance the parties will 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 in relation to a matter arising under this award 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 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 purpose of this clause.
- 9.6** While the dispute resolution procedure is being conducted work must continue normally unless an employee has a reasonable concern about an imminent risk to his or her health or safety. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform other available 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. Employment categories**

**10.1 General**

- (a)** Employees under this award will be employed in one of the following categories:
- (i)** Full Time Employees; or
  - (ii)** Part-Time Employees; or
  - (iii)** Casual Employees; or
- (b)** At the time of engagement an Employer will inform each Employee of the terms of their engagement and in particular whether they are to be Full-Time, Part-Time or Casual Employees.

**10.2 Full-time employment**

- (a) An employer may employ an employee on a full-time basis of 38 hours per week

### **10.3 Casual Employment**

- (a) A Casual Employee is an Employee engaged as such.
- (b) A Casual Employee for working within the ordinary hours of work (pursuant to Clause 20) shall be paid per hour for the work performed plus 25% loading which incorporates the casual Employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shift allowances.
- (c) Casual Employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
- (d) On each occasion a Casual Employee is required to attend work he or she is entitled to a minimum payment for three hours work.

### **10.4 Part-Time Employees**

- (a) An Employer may employ Part-Time Employees in any classification in this award.
- (b) A Part-Time Employee is an Employee who:
  - (i) has reasonably predictable hours of work; and
  - (ii) receives, on a pro-rata basis, equivalent pay and conditions to those of full-time Employees who do the same kind of work.
- (c) At the time of engagement the Employer and the part-time Employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the Employee will work and the actual starting and finishing times each day.
- (d) Any agreed variation to the regular pattern of work will be recorded in writing.
- (e) An Employer is required to roster a regular part-time Employee for a minimum of two consecutive hours on any shift.
- (f) An Employee who does not meet the definition of a regular part-time Employee and who is not a full-time Employee will be paid as a casual Employee.
- (g) All time worked in excess of the hours as mutually arranged, excluding any Additional Hours, will be overtime.
- (h) A regular part-time Employee employed under the provisions of this clause must be paid for ordinary hours worked on a pro rata basis of the full-time Employee at the full-time Employee rate.
- (i) All leave accruals and separation entitlements of part-time Employees shall be calculated and paid on a pro-rata basis of the full-time Employee at the full-time rate of pay.
- (j) Where an employee and their employer agree in writing, part-time employment may be converted to full-time, and vice-versa. If such an employee transfers from

full-time to part-time (or vice-versa), all accrued award and legislative entitlements will be maintained. Following transfer to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

**11. Employer and employee duties**

- 11.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
- 11.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that such employee has been properly trained in the use of such tools and equipment.
- 11.3 Any direction issued by an employer pursuant to 11.1 and 11.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

**12. Termination of employment**

**12.1 Termination of employment**

12.2 Notice of termination is provided for in the NES.

**12.3 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 has the right to withhold pay to a maximum amount equal to the amount the employee would have received under the terms of the NES.

**12.4 Job search entitlement**

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

**12.5 Return to place of engagement**

If the employment of any employee is terminated by the employer elsewhere than at the place of engagement, for any reason other than misconduct, the employer shall be responsible for conveying the employee to the place of engagement.

**13. Redundancy**

13.1 Redundancy pay is provided for in the NES.

13.2 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.

### **13.3 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.

### **13.4 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

### **13.5 Transitional provisions**

- (a) Subject to clause 13.5(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**

**14. Minimum wages**

14.1 The minimum rates for each classification shall be:

<b>Classification</b>	<b>\$ per week</b>
Master	751.30
Mate	714.40
Engineer	714.40
General Purpose Hand/Deckhand/greaser/Passenger attendant/turnstile attendant/boating attendant/host/hostess/fireman/trimmer/linesman/cook/sailor/able seaman/leading hand	674.70
Shipkeeper	616.30
Crane Driver (under 20 tonnes)	627.70
Crane Driver (over 20 tonnes)	693.80

**15. Allowances**

**15.1 Bedding and other utensils**

- (a) When vessels are away during the night, the employer shall supply a mattress, 2 blankets, 2 sheets, one pillow, one pillow slip, towel, soap eating utensils, washing cloths and drying towels. Laundering to be the responsibility of the employer.
- (b) On termination of employment an employee will be required to return to the employer all articles on issue to them.

**15.2 Charge hands**

Charge Hands shall be paid an allowance of 3.26% of the SR per week. Charge hands not directly supervised by a foreman in the allocation of duties to employees shall be paid an allowance of 4.85% of the SR per week.

**15.3 Distant Work**

- (a) A relieving employee other than a casual employee who is required to work at a place away from his/her normal place of work shall be paid all additional fares involved and additional travelling time involved at the rate of single time; provided that no employee shall be paid more than his/her ordinary day's wages for any time not exceeding 24 hours spent in travelling.

- (b) A relieving employee including a casual employee who is temporarily transferred to a locality to carry out relieving duties, where it is necessary to sleep away from his/her home, shall be provided with reasonable board and lodging or paid an allowance of 56.23% of the SR per week of seven days. In the case of broken parts of a week, the allowance shall be all living expenses actually and reasonably incurred but not exceeding the rate of 8.00% of the SR per day.

#### **15.4 Dual capacity allowance**

An employee who is a holder of a Certificate of Competency as a Marine Motor Engineer shall be paid an allowance of \$3.88 for each day or part of a day during which he/she is required to use such a certificate. The allowance prescribed by this subclause shall, when paid, be deemed to be part of the ordinary rate of wages for the purpose of calculating overtime, annual leave, sick leave and long service leave.

#### **15.5 Protective clothing**

On request an employee shall be supplied by the employer with an oilskin, "south wester", sea boots, overalls, gloves, hard hats, sun-screen lotion, safety glasses, safety shoes, sunglasses and ear protection devices for his own use when it is reasonably necessary to wear such protective clothing.

#### **15.6 Uniforms**

Where employees are required to wear uniforms, these shall be provided by the employer at no cost to the employee or, in lieu thereof, the employer will pay to the employee the sum 2.01% of the SR. Such uniform shall be laundered by the employer.

#### **15.7 Compensation for loss of personal effects**

If in the course of employment an employee should sustain damage to or loss of their personal effects by fire, explosion, foundering, shipwreck, collision, stranding or accident and where such damage was not caused by the employee's own willful neglect or fault or where such articles are lost through breaking or entering whilst securely stored at the employer's direction in a room or building on the employer's premises, vessel or work shop, the employer shall compensate the employee to the extent of the damage or loss to a maximum of 210.30% of the SR.

#### **15.8 Dirty Work**

- (a) An employee called upon to perform work which is more dirty or offensive than would normally apply shall be paid an additional .07% of the SR per hour for the time spend on such work.
- (b) Provided that, in lieu of the above allowance, for all work an employee is required to perform alongside vessels in discharging alumina, petroleum, coke, sulphur, anhydrous ammonia and all phosphates, the employee shall be paid an allowances of 0.18% of the SR per hour. Such employee will be eligible for this payment from the time the barge ties up to the vessel until the time it returns to its berth at the completion of the bunker.

**15.9 Wet work**

- (a) Any employee working in water or "wet places" shall be paid an extra allowance of .03% of the SR per hour.
- (b) "Wet places" shall mean places where, in the performance of the work, the splashing of water or mud saturates the employee's clothing, or where protection is not provided to prevent splashing or drippings sufficient to saturate his clothing, and shall include wet material or wet ground in which it is impracticable for the employee wearing ordinary working boots to work without getting wet feet. Provided this clause shall not apply to employees working on natural surface made wet by rain.

**15.10 Unloading/loading garbage allowance**

An employee called upon to work at loading or unloading garbage and/or ashes or other like material shall be paid an allowances of 0.07% of the SR per hour.

**15.11 Slipway etc allowance**

A junior employee called to work on slipways, cleaning, scraping, painting or overhauling launches, barges, punts or any other floating plant shall be paid an allowance of 0.08% of the SR per hour.

**15.12 Bilge allowance**

An employee required to work in the bilges shall be paid an allowance of 0.11% of the SR per hour.

**15.13 Chipping Hammers**

Employees using electric or pneumatic chipping hammers, wire brushing machine and sandblasting machine shall be paid at the rate of 0.01% of the SR per hour in addition to any other ordinary or overtime rate for the time so occupied. Where a chipping hammer is being used in a confined space, suitable ventilation shall be installed, if practicable, before work commences.

**15.14 Expenses**

The employer shall reimburse an employee any expenses reasonably incurred by them in the service or interest of the employer, provided the employee is able to prove such expense by way of receipts.

**15.15 First aid**

An employee on becoming qualified as the holder of appropriate first aid qualifications such as a certificate from the St Johns Ambulance or its equivalent, and who is required by the employer to perform first aid duty shall be paid an allowance of 1.70% of the SR per week.



### 15.16 Loading and discharge of cargo and supplies

- (a) An employee directed by the employer to load or discharge cargo including personal belongings of passengers, foodstuffs, beverages, or laundry, shall be paid allowances as set out below when so engaged:
- (i) On vessels including barges and landing craft transporting passengers and cargo including fuel and/or water and roll on/roll off cargoes between the mainland and island resort/s:
    - I. 2.99% of the SR per week of 5 working days
    - II. Where an employee is so engaged in any week in excess of 5 days he/she shall be paid an additional 0.61% of the SR per day
  - (ii) On vessels (including barges and landing craft) transporting cargo only between the mainland and island resort/s or between island resorts: 5.23% of the SR per trip
  - (iii) On vessels engaged in overnight cruises one to 6 nights 2.01% of the SR per trip
  - (iv) On vessels engaged in overnight cruises over 6 nights 3.00% of the SR per trip
  - (v) Provided that:
    - I. an additional amount shall be not payable where the loading or discharge is restricted to ships stores, fuel and/or water cargoes, incidental personal belongings of passengers, or other items required on board exclusively for a day cruise;
    - II. an employee may be required to supervise the loading or discharge (including roll on/roll off cargoes) where such work is part of their normal duties, without additional payment.

### 15.17 Meal Allowances

When an employee who is required to work overtime in excess of one and one-half hours after the usual ceasing time, without being notified the previous day, the employee shall be provided with a suitable meal or be paid 1.91% of the SR in lieu thereof. Should such overtime work continue for a further four hours, the employee shall be provided with a second meal or be paid 1.91% of the SR.

### 15.18 Waiting orders

- (a) An employee who is required by his employer to telephone for orders shall:
- (i) If an employee has a telephone installed at their home, be paid the annual rental of such telephone plus 16.51% of the SR for calls necessarily incurred by the employee for ringing for such orders. If the employee is required by their employer to have a phone installed, the installation fee shall be paid by the employer.

- (ii) An off-duty employee required to ring for orders other than on a phone provided totally or in part by the employer, shall receive as an allowance of 0.42% of the SR.

**15.19 Tools**

Where employees are required to provide and use their own tools the employer shall be responsible for the replacement of such tools broken, worn out, lost or stolen in the course of employment.

**15.20 Towing**

- (a) Employees on any vessel either towing or carrying explosives shall be paid an additional 0.29% of the SR for each day or part thereof while so engaged. This rate shall be treated as Part of the wages for all purposes of this award. For the purposes of this subclause, explosives means any material used as an explosive, such as gunpowder, blasting powder or materials, or any other material of like nature, but does not include petroleum products.
- (b) Masters engaged in towing non self-propelled bunker barges having a carrying capacity of 400 tons or more, shall be paid an additional amount of 0.27% of the SR for each day or Part thereof while so engaged. Provided always that moving such bunker barges at terminal points is not regarded as towing within this provision. This rate shall be treated as Part of the wages for all purposes of this award.
- (c) Employees on vessels proceeding beyond the limits of a harbour, river or bay shall whilst so engaged be paid an allowance of 25 per cent with a minimum payment for four hours.

**15.21 Ships stranded or wrecked or on fire**

- (a) If a ship in the course of a voyage becomes wrecked or stranded and the employees are called on for special efforts while the ship is still wrecked or stranded they shall, for the time during which they so assist, be paid 1.71% of the SR per hour.
- (b) For the purposes of this clause a ship shall be deemed to be wrecked if, while at sea, it is so disabled so as to be a dangerous crisis and unable for the time being to continue its voyage in the ordinary course of its operations.
- (c) Where a ship grounds in a tidal river or harbour and is refloated by ordinary means, with or without cargo, and without special work such as laying out anchors and handling hawsers being required of the employees, it shall not be deemed to be wrecked or stranded within the meaning of subclause (b).

**15.22 Transport**

- (a) Where an employee commences or finishes work or is required for call out between the hours of 11.00 p.m. and 6.00 a.m. the employer shall:
  - (i) Supply them with a conveyance to or from their home whichever is appropriate; or

- (ii) Pay them for time spent in reaching their home or travelling therefrom at their prevailing rate with a minimum of half an hour and a maximum of one hour; or
  - (iii) If by arrangement with their employer the employee uses their own motor vehicle they shall receive an allowance of not less than 0.09% of the SR per kilometre.
- (b) An employee who is required to use their own vehicle to travel to or from a starting or finishing point other than their regular starting or finishing point shall be paid, for the distance and time in excess of the distance or time involved in getting to their normal starting or finishing point, 0.10% of the SR per kilometre for the excess distance travelled and shall be paid at the prevailing rates of pay for the excess time occupied in travelling with a minimum of half an hour and a maximum of one hour.
- (c) Where an employee who is not required to use their own motor vehicle, and should in the ordinary course of employment begin their work for the day at a particular place, is required to finish work at a place other than that particular place they shall be paid any reasonable travelling expenses and shall also be paid at overtime rates of pay for any travelling time occasioned beyond their ordinary travelling time.

**15.23 Travelling to another port**

- (a) When an employee is required to travel from their home port to another port, time spent outside of their ordinary hours shall be paid for as travelling time.
- (b) The rate of pay for travelling time shall be ordinary rates, except on Sundays and holidays when it shall be time and a half.
- (c) The maximum travelling time to be paid for shall be eight hours on any one day.

**15.24 Travelling expenses**

Where an employee is required to join or leave a vessel at a place other than their place of engagement, they shall be entitled to a free passage and to be reimbursed all out of pocket expenses reasonably incurred by them. The free passage if by rail shall be first class and shall include a sleeping berth when the train includes sleeping berth accommodation. The free passage if by air is to be in commercial aircraft, first class if available.

**15.25 Loading for duties outside normal work**

An amount of 0.55% of the SR per day shall be paid in excess of other wages and allowances to employees, for each day they are required to perform the duties of diving to clean glass bottom boats or to clear obstructions from boats propellers.

**15.26 Living away from home**

- (a) Whilst away from the vessel's home port, an employer shall provide the employee with proper meals and accommodation and be responsible for

payment of reasonable expenses actually incurred for such meals and accommodation ashore.

- (b) Whilst at sea, every employee shall be provided with proper meals, attendance, bedding and soap, and be supplied once a week with clean bed linen and twice a week with clean towels. The employer shall be responsible for the laundering of linen and towels.
- (c) Where it is the employer's responsibility to provide the employee with proper meals and accommodation ashore, and the employer fails to do so the employer shall reimburse the employee for all costs incurred in relation to normal meals and charges incurred for a good standard of accommodation.
- (d) Tea, sugar, milk and coffee shall be provided on all vessels for employees at the employer's expense.

## **16. Mixed functions**

An employee engaged for more than two hours during one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for such day. If engaged for two hours or less during one day he or she shall be paid the higher rate for the time so worked.

## **17. Payment of wages**

Wages shall be paid weekly or fortnightly. Wages may be paid by cash or electronic funds transfer (EFT).

## **18. Superannuation**

### **18.1 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.

### **18.2 Employer contributions**

- (a) 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.

### 18.3 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 18.2.
- (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 18.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or (b) was made.

### 18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(a) or (b) to one of the following superannuation funds:

- (a) the Stevedoring Employees Retirement Fund (SERF); or
- (b) the Seafarer's Retirement Fund (SRF) (REST); or
- (c) AMP Superannuation Savings Trust [MOST, AIMPE or MODIF]; or
- (d) 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.

### 18.5 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 18.2 and pay the amount authorised under clauses 18.3(a) or (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**

**19. Ordinary hours of work and rostering**

**19.1** This clause supplements Division 2 of the NES which deals with maximum weekly hours.

**19.2 Span of hours**

(a) Ordinary hours may be worked between 6am and 6pm for up to 8 hours per day, Monday to Friday inclusive.

**19.3 Rostering**

(a) Rostered Days Off shall be so arranged that in each week two of such days shall be consecutive except where the employer and the employee agree otherwise.

**19.4 Avoidance of physical exhaustion**

(a) An employee who has been on duty continuously, including meal breaks, for more than 18 hours shall not be required by his employer to continue duty until he has had, for the purpose of rest, a period of 10 hours off duty.

(b) Should an employee work at the request of the employer after he has been on duty continuously, including meal breaks for more than 18 hours, he shall be entitled to be paid at the rate of double time for the period of such duty in addition to any other payment due to him until such time as the 10 hours' respite from duty commences.

(c) Employees shall receive their full weekly rate notwithstanding any rest period occurring in ordinary working hours.

**20. Breaks**

**20.1** An employee shall not be required to work for more than five hours without a break for a meal.

**(a) Breakfast**

The hour preceding the usual starting time. The foregoing breakfast break shall not be taken when men are required to commence at 7.00 a.m. or after, and preceding the usual starting time.

(i) By mutual agreement between the employer and employees concerned, a twenty minutes crib time may be taken without deduction of pay in lieu of the prescribed hour for breakfast. Such crib time shall commence twenty minutes before the usual starting time unless otherwise mutually agreed.

(ii) Employees ordered in to dock or shift a vessel at 7.00 a.m. shall not be entitled to a meal break before noon, but if ordered in at any time before 7.00 a.m. they shall have an hour for breakfast not later than 8.00 a.m. or a crib time of twenty minutes as provided above.

**(b) Lunch**

Noon to 12.45 pm. or such period as is the usual custom of the establishment at which the men are employed.

**(c) Tea**

5.00 p.m. to 6.00 p.m. or according to the usual custom of the establishment at which the employees are employed. Provided that by mutual agreement between the employer and employee concerned a crib time may be taken.

**(d)** The times prescribed above may be altered by mutual agreement between the employer and employee concerned.

**20.2** Double time shall be paid for all work done during the breakfast, lunch and tea breaks specified above, such double time to continue until the men are granted a meal break or are released from duty. This provision has no application to establishments or jobs where, in accordance with this clause, it is customary for paid crib times to be taken in lieu of the breakfast and/or tea breaks, and such crib times are allowed and taken.

**21. Overtime and penalty rates**

**21.1** Employees will be entitled to be paid:

**(a)** A loading of 50% of the ordinary hourly base rate of pay for the first three hours, and 100% the ordinary hourly base rate of pay thereafter for any time worked outside of ordinary hours on a Monday to Friday, except for public holidays.

**(b)** For all ordinary hours and overtime worked between midnight Friday and midnight Saturday a loading of 50% of the ordinary hourly base rate of pay.

**(c)** For a minimum of four hours if recalled to work overtime after leaving the employer's premises.

**21.2 Time off instead of overtime payment**

**(a)** An employee may elect, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer.

**(b)** The employee may take one hour of time off for each hour of overtime, paid at the employee's ordinary hourly base rate of pay.

**21.3 Shift work penalties**

**(a)** An employee whilst on early morning shift or afternoon shift will be paid a loading of 13.23% of the standard rate per hour.

**(b)** An employee whilst on night shift will be paid a loading of 15.73% of the standard rate per hour.

- (c) An employee whilst on permanent night shift will be paid a loading of 29.86% of the standard rate per hour.

#### 21.4 Sunday work

An employee will be paid a loading of 100% of the ordinary hourly base rate of pay for any hours, ordinary and overtime, worked on a Sunday.

#### 21.5 Public holidays

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

### 22. Shiftwork

#### 22.1 The following shifts may be worked:

- (a) **Afternoon shift** means any shift finishing after 6.00 p.m. and at or before midnight.
- (b) **Continuous work** means work carried on with consecutive shifts of men throughout the 24 hours of each of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.
- (c) **Night shift** means any shift finishing subsequent to midnight and at or before 8.00 a.m.
- (d) **Permanent night shift** employee means an employee who
- (i) During a period of engagement on shift, works night shift only; or
  - (ii) Remains on night shift for a period longer than four consecutive weeks;
  - (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least 1/3rd of his working time off night shift in each shift cycle shall during such engagement period or cycle.

#### 22.2 Shiftwork rates

Type of shift	Shift rate
Afternoon shift	115% of the ordinary time rate
Night shift	115% of the ordinary time rate
Permanent night shift	130% of the ordinary time rate



## Part 6—Leave and Public Holidays

### 23. Annual leave

The following provisions supplement the NES.

#### 23.1 Annual leave loading

A loading of 17.5% (20% for shift workers) is payable in addition to the payment for the leave.

#### 23.2 Shiftworkers

For the purpose of Division 5 of the NES a shiftworker is an employee employed on shift work where three shifts per day are worked over a period of seven days per week or an employee regularly rostered to work on Sundays and public holidays.

#### 23.3 Requirement to take annual leave

Annual leave must be taken within 6 months of the entitlement accruing. An employer may require an employee to take a period of annual leave provided the employee is given at least 14 days notice.

### 24. Personal/carer's leave and compassionate leave

24.1 Personal/carer's leave and compassionate leave are provided for in Division 6 of the NES.

### 25. Community service leave

Community Service leave is provided for in Division 7 of the NES.

### 26. Public holidays

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

26.2 An employee shall be paid at the rate of double time and a half with a minimum of 4 hours work when required to work on a public holiday.

### 27. Accident Pay

27.1 Subject to clause 28.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a NAWSA 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

**Parties' Draft (MUA, AIMPE): Port Harbour and Enclosed Water Vessels Award 2010**

- (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.
- 27.2** 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.
- 27.3** This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.
- 27.4** This clause ceases to operate on 31 December 2014.

## **Schedule A—Classifications**

### **A.1 Master**

A master is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

### **A.2 Mate**

A mate is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority

### **A.3 Engineer**

A engineer is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

### **A.4 General Purpose Hand**

A general purpose hand is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

### **A.5 Deckhand**

A deckhand is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

### **A.6 Greaser**

A greaser is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

### **A.7 Passenger attendant**

A passenger attendant is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

### **A.8 Turnstile attendant**

A turnstile attendant is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime

Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

**A.9 Boating attendant**

A boating attendant is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

**A.10 Fireman**

A fireman is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

**A.11 Trimmer**

A trimmer is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

**A.12 Linesman**

A linesman is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

**A.13 Sailor**

A sailor is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

**A.14 Able Seaman**

A able seaman is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

**A.15 Cook**

A cook is an employee who holds an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

**A.16 Host/hostess**

A host/hostess is an employee who holds an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

**A.17 Crane Driver**

A crane driver is an employee who holds an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

**A.18 Shipkeeper**

An employee on board a vessel in port and available for the performance of any duty.

**AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

*Workplace Relations Act 1996*

**Award Modernisation**

**Maritime Industry**

(AM2008/41)

**Oil & Gas Industry**

(AM2008/44)

**Port and Harbour Services**

(AM2008/49)

**SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA (MUA)**

**AND**

**THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS (AIMPE)**

1. The MUA and the AIMPE submit that the 42 awards and NAPSA's (See Schedule A) currently operating in the maritime industry, off shore oil and gas industry, ports and harbour services, public transport industry (in relation to the Stradbroke ferries) and Tourism industry (in relation to the Whitsunday charter boats) be replaced by seven (7) awards as follows:

**Seagoing Industry Award 2010** which has coverage of employers engaged in or in connection with vessels trading as cargo or passenger vessels which in the course of such trade proceed to sea (on voyages outside the limits of bays, harbours or rivers) and their employees in defined classifications.

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**Dredge Industry Award 2010** which has coverage of employers in the dredge industry and their employees in defined classifications.

**Offshore Oil and Gas Award 2010** which has coverage of employers in the offshore oil and gas industry and their employees in defined classifications.

**Tug Industry Award 2010** which has coverage of employers in the tug industry and their employees in defined classifications.

**Port Harbour and Enclosed Water Vessels Award 2010** which has coverage of employers in the port, harbour and enclosed water vessels industry and their employees in defined classifications. Some of the vessels previously covered by awards which have been absorbed into this award do proceed beyond enclosed waters; however their operations and current award conditions fit more comfortably into this award than the proposed Seagoing Industry Award 2010 or any other industry award.

**Port Authorities and Port Construction Award 2010** which has coverage of employers in the port authorities and port construction industry and their employees in defined classifications.

**Stevedoring Industry Award 2010** which has coverage of the stevedoring industry and their employees in defined classifications.

2. Seven separate draft awards and submissions on behalf of our clients supporting the making of each of those seven awards have been filed with the commission and are published on the Commissions award modernisation web site.
3. In preparing these drafts we believe we have followed and had regard to Part 10A *Workplace Relations Act 1996* the anticipated provisions of the Fair Work Australia Act, the section 576C(1) Ministerial Request dated 16<sup>th</sup> June 2008 and the principles and practices relating to award modernisation as pronounced by the Commission in their various statements and decisions since the request. We have attempted to reflect and reproduced the current award conditions which are relevant to the award modernisation process in the proposed award conditions. In some cases we have been able to

consolidate the various standards contained in the various awards which are incorporated into the modern awards. In some cases, eg the Tug Award 2010, we have not been able to do so. We will continue these attempts during the exposure draft phase in consultation with other parties and will report any progress to the Commission.

4. Since filing those submissions we have had the opportunity of considering the submissions of other parties relevant to the industries covered by those draft awards and where necessary have conferred with those parties. As a result we make the following further submissions in respect to each award.
5. We have considered each of the submissions and to the extent they are available draft awards proposed by the other parties with interests in the various areas where our clients have made submissions and proposed awards. We maintain that the awards that we proposed are appropriate, but wish to make our position clear as to our client's attitude about the matters raised by the other parties.
6. In relation to the **Seagoing Industry Award 2010**

Australian Mines and Metals Association

Australian Metals and Mines provided a draft award which we comment on below:

- a. We oppose the inclusion of the new concept of a work cycle. This appears through the draft including the definitions and the hours of work clause;
- b. The proposed coverage is limited to a defined category of Seagoing Vessels. This definition is more restrictive than the definition of vessels in the current Maritime Industry Seagoing Award 1999. The coverage does not apply to employers "in or in connection with" such vessels. Both these matters unduly restrict the coverage of the modern to a more limited class than currently exists.
- c. The creation of new categories of full-time and part-time employment is opposed. These are not concepts known to the industry. The industry has permanent employees and casual/relief employees. As a matter of practice vessels proceed to sea on a swing that is not of a fixed duration. It is not appropriate that a vessel



away from shore for periods exceeding a week should have employee who are employed to work less than 38 hours per week. It is misleading to re-label casual as fixed term employees as it is not possible at the beginning of a swing to provide an exact end date of the swing.

- d. There is no basis for providing for a probationary period of more than 3 months. It is not a current condition in the industry and is opposed;
- e. The proscriptive requirements in relation to employer and employee duties (clause 13.4) are not current conditions and are opposed.
- f. The reduction in payments on termination of employment to the NES is opposed. The currently conditions should be maintained.
- g. We do not oppose the addition of the new concepts of “transfer to lower paid duties” and “employee leaving during notice period”. They are provisions created by the Full Bench in their decision of 12 September 2008;
- h. The explanation of the aggregate wage (clause 13.3) provides unnecessary detail and should be omitted.
- i. The new right of employers to pay employees monthly is opposed. The current provision of monthly payments only by consent should be maintained.
- j. The reference to the Navigation Act in the Personal/Carer’s leave clause should be removed. It is unnecessary.
- k. The deletion of the “Meals whilst travelling by air” allowance is opposed. The current provision should be maintained.
- l. The deletion of the “Conveyance” allowance is opposed. The current provision should be maintained.

Australian Maritime Officers' Union.

We support their proposed extension to the coverage clause following the order of Commissioner Raffaelli PR969407 which varied MISA on 24 March 2006 and for the inclusion of the additional categories.

CSL Australia Pty Ltd

- a. We oppose each of the matters raised by CSL in their submissions. Their submissions ignore the requirement of the request from the Minister that the creation of modern awards is not intended to disadvantage employees (clause 2(c)). Their submissions are an unashamed attempt to drive down wages and conditions.
- b. The coverage of their proposed award is unnecessarily limited to Australian registered ships. There is no basis for this limitation. It is not reflective of the current scope of the Maritime Industry Seagoing award 1999, the Workplace Relations Act 1996 or those of the proposed Fair Work bill 2008. The scope of later will not be set until any regulations are made as they can extend or reduce the jurisdiction of the Act (see sections 31 - 35 of the Fair Work Bill).
- c. There is no ability in the award modernisation process to revisit the setting of conditions in an award that has been simplified by the Commission. (In the case of the Maritime Industry Seagoing Award 1999 the relevant decisions are Q9604 and the Commissioner's decision about properly fixed minimum rates which is contained in Transcript of 19 October 1999 in C007 of 1998 at pages 28 and 29). The fact that the award contains properly fixed minimum rates was further confirmed by Commissioner Lawson in PR919859, proceedings that involved CSL Australia Pty Ltd.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

AMP Life Limited

We oppose AMP Superannuation Savings Trust being named as the default fund. The appropriate funds are set out in our proposed award.

Sunsuper Pty Ltd

We oppose Sunsuper being named as a default fund. The appropriate funds are set out in our proposed award

7. In relation to the **Dredge Industry Award 2010**

Local Government Association of NSW

We do not oppose their proposed exclusion in to this award. It only relates to the very small number of councils that may engage staff to operate dredges in relation to land reclamation, canal development, foreshore improvements and environmental engineering to improve title flows from rivers and lakes.

Dredging Industry Industrial Secretariat (McCarthy Ausgroup)

Those submissions support the creation of a modern award for this separate industry.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

8. In relation to the **Offshore Oil and Gas Award 2010**

Australian Workers' Union

We support the coverage of the Offshore Oil & Gas Industry. It is in the same terms but formatted differently to our draft. They have added the terms and conditions for the other categories of employees as foreshadowed in our submissions.

Australian Mines and Metals Association

AMMA has provided a comprehensive draft which we make the following comments in relation to:

- a. The creation of concepts of cycle work throughout the award is a new concept to the industry and is opposed on that basis. The maritime employees in this industry swing on and swing off which is a different concept to the cycle work that occurs in other parts of the Oil and Gas Industry;
- b. Coverage is unnecessarily limited to defined "offshore vessels" and fails to include those that are engaged "in or in connection with" those vessels. The coverage clause proposed by our clients should be adopted by the Commission. It more properly reflects the definition of the industry;
- c. The creation for the first time categories of part-time employment and conversion casual/relief employment into fixed term/relief employment. Part-time employment has no place in the industry. Employees go to work on a swing and whilst so engaged perform hours of work well in excess of 38 hours per week. It is not of practical utility to have persons on such facilities and vessels that would need a requirement of working less than 38 hours a week. The use of the term "fixed term" is not appropriate. The term is not fixed in the traditional sense in that whilst you leave shore with an indication that you might be gone for 2 weeks due to environmental matters, and in particular weather, the period of the swing may be longer or shorter;
- d. There is no basis for providing for a probationary period of more than 3 months. It is not a current condition in the industry and is opposed;
- e. The proscriptive requirements in relation to employer and employee duties (clause 13.5) are not current conditions and are opposed.
- f. The reduction in payments on termination of employment to the NES is opposed. The currently conditions should be maintained.

- g. We do not oppose the addition of the new concepts of “transfer to lower paid duties” and “employee leaving during notice period”. They are provisions created by the Full Bench in their decision of 12 September 2008;
- h. The explanation of the aggregate wage (clause 13.3) provides unnecessary detail and should be omitted.
- i. The removal of short hand allowance for vessels (clause 14.9) is opposed;
- j. The omission of the right of an Integrated Rating to take study leave is opposed. This right is granted by clause 14 of the Floating Productions Facilities Award and should be maintained;
- k. The leave provisions fail to properly reflect what is in the industry currently. The current provisions should be maintained.
- l. The reference to the Navigation Act in Personal/Compassionate leave is unnecessary and should be omitted;
- m. We oppose the inclusion of a Maximum Weekly Hours clause in the terms provided. This is properly dealt with in the two crew duty system as set out in our draft;
- n. The insertion for the first time of a Meal Breaks clause fails to reflect reality. The provision of a minimum of 30 minute unpaid meal break should be increased to one of 60 minutes in duration.

#### CFMEU

We do not oppose the creation of a coal treatment industry in the terms expressed by the CFMEU. All coal terminals other than Gladstone and dedicated coal ports that have their terms and conditions of employment set by enterprise awards.

Communications, Electrical and Plumbing Union (CEPU).

We do not oppose the exclusion of electrical contractors from the modern award. Our draft award only seeks to cover employees.

The Association Professional Engineers Scientist and Managers, Australia

We do not oppose the creation of an occupational award for their members. We would like to see the scope of that proposed award before commenting further.

Oil Industry Industrial Committee

Their submission supports the separation of the maritime aspect of the industry from the balance of the industry. For clarity we submit that their exclusion should extend to Masters, Facility Masters, Electrical Engineers, Marine Electricians, Deckhands, Provisional Integrated Ratings and Bosuns.

Australian Industry Group

We do not oppose their proposed exclusion for Maintenance Contractors. Our draft award only seeks to cover employees.

Australian Manufacturing Workers Union

We support the continuing operation of the Manufacturing Association Industries and Occupational Award 2010 for engineering, maintenance and laboratory workers.

LHMU

We oppose their proposed exclusion. The LHMU have no members involved in the Offshore Oil and Gas Industry as defined by our proposed award. The exclusions will create confusion as our draft award reflects the current position of conditions for Chief Caterers, Chief Cooks, Cooks, Chief Stewards, Catering Integrated Ratings, 2<sup>nd</sup> Cooks, Head Cooks, Other Cooks and Other Cooks. The provisions that currently relate to this area of work should be adopted rather than those that are contained in the Hospitality Industry (General) Award 2010.

Australian Services Union

We are unaware of any clerical or administrative employees involved in the industry in the way it is defined in our proposed Offshore Oil & Gas Industry 2010. Their inclusion is opposed.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund in the award. The appropriate funds are listed in our draft award.

AMP

We oppose the AMP Superannuation Savings Trust being a default superannuation fund in the award. The appropriate funds have been named in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

9. In relation to the **Tug Industry Award 2010**

Maritime Towage Employer Group

We agree on coverage and that this should be regulated by a separate modern award. We part ways in the following respects

- a. We do not agree to the removal of a regular pattern of work from the current part-time employment provisions.
- b. The Notice of Termination provisions should include a requirement to be returned to port. This arising as a consideration when doing special voyages.
- c. We do not agree to the reduction of the provisions for Special voyages, outside voyages and all the other port specific allowances to single allowances. Each allowance reflects the historical position that each port had its own award. There

is no easy way of reducing all those provisions to single amounts from the type of activity performed without either reducing entitlements for employees or increasing the burden on employers. If such a single allowance is to be created for each matter then in order to ensure employees are not out of the highest entitlement in each circumstance should be adopted and the currently provisions transitioned for 5 years.

- d. We oppose the reduction of the leave factor for Tug and Barge employees. There is no basis for the reduction of a current condition.
- e. We oppose the removal of the maximum hours of work clause which currently applies to the Tug and Barge employees.
- f. The length of any meal break should not be set at the shortest period of time as proposed. If these meal break times are to be reduced to a single period of time for every port then the longest period should be adopted. In the meantime the current provisions should be transitioned for 5 years.
- g. The reduction of compassionate leave to the NES from 3 days is not warranted.
- h. We are prepared to accept the “industrial protective and protective clothing” from the Tug Boat Industry Award in lieu of those contained in our draft.
- i. The removal of 13% superannuation for Tug and Barge employees is unwarranted and is opposed.

#### Ports Australia

Their submission supports towage and tug Services being treated as a separate industry.

#### Australian Services Union

We do not consider it is appropriate that clerical officers under the Clerical Industry – Shipping Officers Award 2003 be included in the Tug Boat Industry Award 2010. They should remain covered by the Clerks – Private Sector Award 2010.



Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund. The appropriate funds are named in our draft award.

First State Super

We do not support First State Super being nominated as the default fund. The appropriate funds are set out in our draft award.

AMP Life Limited

We oppose the nomination of the AMP Superannuation Savings Trust as the default superannuation fund. The appropriate funds are set out in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

CEPU

We do not oppose the exclusion of electrical contractors. Our awards only seek to cover employees.

AMWU

We do not oppose Engineering and Metal Maintenance employees being placed in a Manufacturing and Associated industries and Occupations Award 2010.

10. In relation to the **Port Harbour and Enclosed Water Vessels Award 2010**

Commercial Vessel Association

- a. We oppose either the placing of *Marine Charter Vessels (State) Award AN120330* in the Tourism and Leisure Industry Group or the making an industry award based solely on its terms. Our proposed award consolidates award that have coverage provisions that are relevant to this consideration namely:
1. masters, engineers, principals and charge, launch masters in charge of vessels engaged in the conveyances of passengers (see Master and Engineers Award – Port of Brisbane 2003);
  2. masters, mates, engineers, principals and charge and launch masters operating on the coast of and in the ports of Queensland engaged in the excursion trade, passenger trade (see Masters, Mates and Engineers Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under – State (Excluding the Port of Brisbane) 2003.)
  3. masters, mates and engineers employed on or about surveyed passenger vessels or other vessels operating coastal waters (see Masters, Mates and Engineers Passenger Ferries Award)
  4. Motor ferries used in any regular ferry passenger work (see Motor Ferries State Award;)
  5. Shipping, including the operations of ferries, barges, crews vessels and charter vessels (see the Shipping Award)
  6. Persons employed as crew persons on ketches, schooners and other similar sailing or auxiliary sailing vessels in commercial survey and over 25 metres measured length (see Ketches and Schooners Award); and
  7. Vessels engaged wholly or principally within the limits bays, harbours and rivers (see Port Services Award 1998)

- b. It is somewhat artificial to splice out the Marine Charter Vessels (State) Award from this list. The industry is properly defined by out Port Harbours and Enclosed Water Vessels Award 2010.

The Australia Federation of Employers and Industries

We oppose their proposed creation of a *Tourism and Leisure Charter Vessels Award 2010* based solely on the Marine Charter Vessels (State) Award. The reasons for that opposition are set out in relation to the submissions of the Commercial Vessels Association above.

Whitsunday Charter Boat Industry Association – filed in AM2008/59

We oppose the creation of the Tourism Boating Award 2010 based solely on the Whitsunday Charter Boat Industry Interim Award – State 2005 AN140315. It is not in keeping with the Award Modernisation principals that a single NAPSA be converted into a modern award. This is particularly the case when there are a number of awards being consolidated that deal with commercial vessels that carry passengers whether or not they are engaged in regular schedule passenger transport or otherwise. We otherwise repeat our submissions in relation to the Commercial Vessels Association above.

Local Government Association

We oppose the proposed exclusion of Local Government from the award. It is said to relate to car ferries operated by Local Government. We are aware that there numerous car ferries in both private and public control. They should all be regulated by the one instrument, our proposed award. An example of an industrial instrument covering such ferries is the Wire Drawn Ferries (State) Award.

CEPU

We do not oppose the exclusion of electrical contractors. Our awards only seek to cover employees.

AMWU

We do not oppose Engineering and Metal Maintenance employees being placed in a Manufacturing and Associated industries and Occupations Award 2010.

Sydney Ferries Corporation

- a. We oppose Sydney Ferries Corporation being placed in the Public Transport Industry (other than Rail) Award. All the other awards in that “industry” relate to omnibus, tramways or light rails operations. It is more appropriate that Sydney Ferries, being an operator of passenger ferries have their award conditions set by an award that covers all the other ferries. Our award consolidates for following relevant coverage that would need to be considered before such a submission was accepted:
1. Passenger ferries (see *Deckhands (Passenger Ferries, Launches and Barges) Award*).
  2. Mates, Masters and Engineers and Principals in charge and Launch Masters on motor vessels engaged in the passenger trade (see *Masters, Mates and Engineers Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under – State (Excluding the Port of Brisbane) 2003 Award*,
  3. Conveyance of passengers (see *Masters and Engineers Award – Port of Brisbane Award* )
  4. Passenger vessels (see *Master, Mates and Engineers Passenger Ferries Award*)
  5. Those engaged on Motor Ferries (see *Motor Ferries (State) Award*.)
  6. operation of ferries (see *Shipping award*)

7. those engaged in respect of vessels engaged wholly or principally within the limits of bays, harbours and rivers (see *Port Services award* that currently regulates Sydney Ferries Corporation)
- b. It is somewhat artificial to splice out Sydney Ferries. The industry is properly defined by our Port Harbours and Enclosed Water Vessels Award 2010.

Stradbroke Ferries Pty Ltd Enterprise Award – State 2005 AN140280

- a. This is the only industrial instrument that relates to a vessel that is contained in the Public Transport Industry (other than Rail) list of awards prepared by the Commission. All other types of ferries, motor boats, motor craft etc., have been placed either in the Maritime Industry grouping or the Port and Harbour Services grouping. We submit the grouping of awards that we have consolidated into our Port Harbours and Enclosed Waters Award appropriately covers Stradbroke Ferries Pty Ltd employees and their classifications and the type of work that is performed. Despite the title of that award it covers vessels that also proceed to sea such as those of the Stradbroke Ferry. A number of areas of coverage that are relevant to this consideration have been set out above.
- b. All the unions in the Public Transport (other than Rail) Industry consider that this award should be placed in a maritime style award. It would be artificial to do otherwise. The appropriate instrument is our draft Port Harbours and Enclosed Water Vessels Award 2010.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund. The appropriate funds are named in our draft award.

First State Super

We do not support First State Super being nominated as the default fund. The appropriate funds are set out in our draft award.

AMP Life Limited

We oppose the nomination of the AMP Superannuation Savings Trust as the default superannuation fund. The appropriate funds are set out in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

11. In relation to the **Port Authorities and Port Construction Award 2010**

CEPU

We do not oppose the exclusion of electrical contractors. Our awards only seek to cover employees.

AMWU

We do not oppose Engineering and Metal Maintenance employees being placed in a Manufacturing and Associated industries and Occupations Award 2010.

APESMA

We do not oppose the creation of a separate occupational award for their members and are happy to have negotiations with them over their proposal that the Professional Engineers and Scientists be included in the Port Authorities and Port Constructions Award. We would like to see their proposal so such consideration can be given.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund. The appropriate funds are named in our draft award.

First State Super

We do not support First State Super being nominated as the default fund. The appropriate funds are set out in our draft award.

AMP Life Limited

We oppose the nomination of the AMP Superannuation Savings Trust as the default superannuation fund. The appropriate funds are set out in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

12. In relation to the Stevedoring Industry Award 2010Australian Services Union

Our draft Stevedoring Industry Award 2010 (clause 4.5(f)) provides an appropriate level of coverage of clerical and administrative employees for this industry. The award term has been in that form for many years and we know of no reason to alter it.

CFMEU

We do not oppose the creation of a Coal Treatment Industry in the terms sought by the CFMEU for the reasons set out above.

Coal Terminals Group

We support the creation of a separation of coal award for the reasons set out above.

Livingstons Australia/Gladstone Ports Corporation

There submissions support stevedoring being treated as a separate industry but further split our Bulk Handling. We do not support this further split. In the circumstances that we

consider that sugar, aluminum and coal should all be consider separately to stevedoring there is too small a group of areas left to be covered by such an award.

#### Ports Australia

- a. Their submission supports Stevedoring being treated as a separate industry.
- b. We do not agree that construction should be excluded from the Ports Award. The construction of wharves, piers and other matters relating to ports has traditionally be considered part of the one industry (see for example their inclusion in the Queensland Regional Port Authorities and Corporations Employees Interim Award 2000 (AP794137))
- c. Similarly the traditional 3 grouping classification system that has been used for years. There is no reason it should not be maintained. Our award provisions should be adopted.

#### P & O Automotive and General Stevedoring Pty Ltd

Their submission supports the creation of a Stevedoring Industry specific award.

#### DP World Australia Ltd

Their submission supports the creation of a Stevedoring Industry specific award.

#### Patrick Stevedores Holdings Pty Ltd

Their submission supports the creation of a Stevedoring Industry specific award.

#### Queensland Sugar Limited

We support an exclusion for sugar from Stevedoring Industry Award 2010 and Ports Authorities and Port Construction Award 2010. Our proposed exclusion is set out in our draft awards.



Australian Workers' Union

We support their proposed exclusions for Sugar and Aluminum and have included them in our drafts. We are still obtaining instructions in relation to their proposed Steel, and Oil and Gas exclusions.

CEPU

We do not oppose the exclusion of electrical contractors. Our awards only seek to cover employees.

AMWU

We do not oppose Engineering and Metal Maintenance employees being placed in a Manufacturing and Associated industries and Occupations Award 2010.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund. The appropriate funds are named in our draft award.

First State Super

We do not support First State Super being nominated as the default fund. The appropriate funds are set out in our draft award.


AMP Life Limited

We oppose the nomination of the AMP Superannuation Savings Trust as the default superannuation fund. The appropriate funds are set out in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

Dated: 18 March 2009



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



.....  
Nathan Keats

<b>AIRC industry grouping</b>	<b>Name of instrument</b>	<b>Pub ID</b>	<b>Our grouping</b>
Maritime	Dredging Industry (AWU) Award 1998	<u>AP778702</u>	Dredging
Port and harbour services	Dredging Industry (AWU) Award 1998	<u>AP778702</u>	Dredging
Maritime	Marine Engineers (Non Propelled) Dredge Award 1998	<u>AP788027</u>	Dredging
Maritime	Maritime Industry Dredging Award 1998	<u>AP787991</u>	Dredging
Maritime	Marine Engineers (Seagoing and Offshore Industries) Long Service Leave Award 1993	<u>AP788173</u>	N/A
Maritime	Maritime Industry (Seamen, Cooks and Stewards) Long Service Leave Award 1995	<u>AP788677</u>	N/A
Maritime	Maritime Officers (Seagoing and Offshore Industries) Long Service Leave Award 1993	<u>AP788130</u>	N/A
Port and harbour services	New South Wales Colliers and Small Ships (State) Award	<u>AN120365</u>	N/A
Maritime	Self-propelled Barge and Small Ships Industry Award 2001	<u>AP810149</u>	N/A
Maritime	Shipping Industry Loss of Certificate of Competency Award 2003	<u>AP825628</u>	N/A
Port and harbour services	Stevedoring Industry (Long Service Leave) Award 1992	<u>AP796037</u>	N/A
Port and harbour services	Transport and Storage Industry Sector - Minimum Wage Order - Victoria 1997	<u>AP800417</u>	N/A
Port and harbour services	Waterfront Employees (Superannuation Contributions) Award 1986	<u>AP802332</u>	N/A
Port and harbour services	Bulk Terminals Award - State 2003	<u>AN140048</u>	N/A – enterprise award
Oil and gas industry	AWU Oil Drilling Rig Workers (Offshore Platform Drilling Rigs) Award 2001	AP812665	Offshore Oil & Gas
Oil and gas industry	Floating Production Facilities Award 2000	AP805290	Offshore Oil & Gas
Oil and gas industry	Maritime Industry Offshore Oil and Gas Operations Award 2003	AP826061	Offshore Oil & Gas
Oil and gas industry	Oil Drilling Rig Workers (Offshore Mobile Drilling Rigs) Award 2001	AP812663	Offshore Oil & Gas

Port and harbour services	Marine Stores Award	<u>AN160196</u>	Port Authorities and Port Construction
Port and harbour services	Maritime Union of Australia (Ship Services) Award 2002	<u>AP816677</u>	Port Authorities and Port Construction
Port and harbour services	New South Wales Port Corporations Award 1999	<u>AP791641</u>	Port Authorities and Port Construction
Port and harbour services	NSW Port Corporations Award 2001	<u>AN120376</u>	Port Authorities and Port Construction
Port and harbour services	Port Stanvac Marine Award	<u>AN150113</u>	Port Authorities and Port Construction
Port and harbour services	Ports of Victoria Consolidated Administration Award 1998	<u>AP792487</u>	Port Authorities and Port Construction
Port and harbour services	Queensland Regional Port Authorities and Corporations Employees Interim Award 2000	<u>AP794137</u>	Port Authorities and Port Construction
Port and harbour services	Regional Port Authority Officers' (Queensland) Award 1999	<u>AP794800</u>	Port Authorities and Port Construction
Port and harbour services	Tasmanian Ports Corporations Award 2002	<u>AP819542</u>	Port Authorities and Port Construction
Port and harbour services	Victorian Port and Harbour Services Consolidated Operational Award 1998	<u>AP802100</u>	Port Authorities and Port Construction
Port and harbour services	Deckhands (Passenger Ferries, Launches and Barges) Award	<u>AN160097</u>	Port Harbour and Enclosed Water Vessels
Maritime	Ketches & Schooners Award	<u>AN150068</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Marine Charter Vessels (State) Award	<u>AN120330</u>	Port Harbour and Enclosed Water Vessels
Maritime	Maritime Award - Brisbane River and Moreton Bay 2003	<u>AN140163</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Masters and Engineers' Award - Port of Brisbane 2003	<u>AN140164</u>	Port Harbour and Enclosed Water Vessels

Port and harbour services	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane ) 2003	<u>AN140165</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Masters, Mates and Engineers Passenger Ferries Award	<u>AN160199</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Motor Boats and Small Tugs (State) Award	<u>AN120350</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Motor Ferries State Award	<u>AN120351</u>	Port Harbour and Enclosed Water Vessels
Maritime	North Queensland Boating Operators Employees Award - State 2003	<u>AN140190</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Port Authorities Award - State 2003	<u>AN140213</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Port Services Award 1998	<u>AP792489</u>	Port Harbour and Enclosed Water Vessels
Maritime	Shipping Award	<u>AN170095</u>	Port Harbour and Enclosed Water Vessels
Public Transport Industry (other than rail)	Stradbroke Ferries Pty Ltd Enterprise Award 2005	AN140280	Port Harbour and Enclosed Water Vessels
Tourism industry	Whitsunday Charter Boat Industry Interim Award - State 2005	AN140315	Port Harbour and Enclosed Water Vessels
Port and harbour services	Wire Drawn Ferries (State) Award	<u>AN120650</u>	Port Harbour and Enclosed Water Vessels
Maritime	Maritime Industry Seagoing Award 1999	<u>AP788080</u>	Seagoing
Port and harbour services	Stevedoring Australian Vocational Training System Award 2000	<u>AP796383</u>	Stevedoring
Port and harbour services	Stevedoring Industry Award 1999	<u>AP796113</u>	Stevedoring

Maritime	Tug and Barge Industry (Interim) Award 2002	<u>AP824200</u>	Tug
Port and harbour services	Tug and Barge Industry (Interim) Award 2002	<u>AP824200</u>	Tug
Port and harbour services	Tugboat Industry Award 1999	<u>AP799111</u>	Tug