

AMMA RESPONSE – MULTIPLE EXPOSURE DRAFTS SUB-GROUPS 1C – 1E

(25 November 2015)

Exposure Draft - Maritime Offshore Oil and Gas Award 2015

1. Clause 9.2 – Wages and allowances – Classifications – Question Box

Marine Orders 70, 71, 72 and 73 under the *Navigation Act 2012* (Cth) are the equivalent of Marine Order Part 3 under the *Navigation Act 1912* (Cth).

2. Clause 9.3 – Aggregate annual salary

AMMA does not oppose the deletion of the clause 9.3 as a substantive part of the exposure draft, however, there is utility in retaining the clause as a *note* in order to understand how the aggregate salary is calculated in clause 9.1.

Exposure Draft – Mining Industry Award 2015

Clause 6.5 – Probationary period

In AMMA's preliminary response to the first iteration of the exposure draft, AMMA supported the retention of the statutory probationary period contained in the modern award. AMMA notes the observations of the Full Bench at [136] and [139]. It appears the statutory test applied in this instance is whether a party is able to provide "strong grounds for its retention" (at [139]). AMMA submits that the statutory test for a variation of a modern award in the four yearly statutory review process is whether a variation is necessary to achieve the modern awards objective. The deletion of a substantive term, such as clause 6.5 is not necessary to achieve the modern awards objective as there has not been any evidence as to why the current provision is not meeting the modern awards objective. Currently AMMA members in the mining industry are not required to bargain over the inclusion of such a clause in an enterprise agreement as the modern award contains a permitted (as opposed to mandatory), probationary provision. Whilst the clause, if relied upon by an employer, is subject to a default time of three months, any period more than three months is required to be reasonable, having regard to the nature and circumstances of the employment. The clause continues to meet the modern awards objective and has been meeting this objective since the award commenced in January 2010. Whilst AMMA does not believe it is a common term across modern awards, this alone, does not mean that it is not necessary to remain as part of the safety-net applying to the extant modern award. In the absence of cogent reasons, or practical examples as why it is causing substantive difficulties, AMMA supports its retention in the industry safety-net applying to the mining industry.

Clause 10.1 – Annual salary instead of award provisions

AMMA does not oppose the variation to 10.1(a) (v).

Clause 13.1 – Definitions

Schedule H - Definitions

AMMA notes that the Full Bench has decided to include a definition of permanent night shift into a number of exposure drafts, with some variation in the wording depending on the exposure draft. For example, the definition in the Hydrocarbons Industry (Upstream) Award 2015 refers to night shift only. However, the proposed definition in the Mining Industry Award 2015 means a period of shiftwork where an employee works “afternoon shift only” or “remains on afternoon or night shift for longer than four consecutive weeks”. This raises some uncertainty over the practical application of the provision in relation to various rosters that operate in the resource industry. For example, for a 2&1 worker, does it mean 2 swings or 18.66 shifts? For a 7&7 worker does it mean 4 swings or 14 shifts? For an 8&6 worker does it mean 2 swings or 16 shifts?

It appears to represent a substantial variation to the extant modern award which may impose additional costs on employers and raise uncertainty in compliance obligations.

The definition of permanent night shift in clause 22 of the Black Coal Modern Award 2010 is limited to night shift and does not include afternoon shifts. AMMA believes this requires further consideration and if the matter is resolved on the papers, AMMA’s preliminary position is that the definitions in the Mining Industry Award 2015 should be varied to reflect the wording of the Hydrocarbons Industry (Upstream) Award 2015.

Typographical corrections

AMMA notes that the word “or” has been omitted after the first sentence.

Exposure Draft – Hydrocarbons Industry (Upstream) Award 2015

Typographical corrections

AMMA notes that the definition in Schedule H is currently drafted as paragraphs “(b)”, “(c)” and “(d)”, rather than “(a)”, “(b)” and “(c)” respectively.

Clause 5.2(a) should refer to “clause 8.2(b)” and replace “clauses 0”.

Exposure Draft – Oil Refining and Manufacturing Award 2015

Clause 13.1 – Shiftwork definitions

The preamble box to the exposure draft indicates that “changes agreed to by parties appear in red text.” The insertion of a definition of “permanent shift” appears in red text (AMMA believes this is a typographical error and is intended to be read as “permanent night shift”) and appears to represent a substantial variation to the extant modern award which may impose additional costs on employers and raise uncertainty in compliance obligations. It does not appear that this was an agreed position during the exposure drafting process, despite the reference at [145] of the Full Bench decision giving that impression. When the summary of the issues raised by the parties and AiGroup’s submission at paragraph 149 is considered in totality, it is clear that the AiGroup proposed for separate definitions of permanent night shift and permanent afternoon shift. AMMA believes this requires further consideration and if the matter is resolved on the papers, AMMA’s preliminary position is that the definitions in the Oil Refining and Manufacturing Award 2015 should be varied to reflect the wording of the Hydrocarbons Industry (Upstream) Award 2015.

Typographical corrections

AMMA notes there is a proposed definition of “permanent shift” in clause 13.1. This appears to be a typographical error and should read “permanent night shift”.

AMMA notes that the word “or” has been omitted after the first sentence and there is also no corresponding definition in Schedule H.