

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

05 May 2016

**Re: AM2014/223 AWU reply submissions on drafting and technical issues in the Exposure Draft for the for the *Dredging Industry Award 2016***

**Background**

1. On 23 March 2016 the President, Justice Ross published a Statement directing parties to file submissions in reply to drafting and technical issues raised in Group 3 exposure drafts by 05 May 2016.
2. The following parties filed submissions on drafting and technical issues found in the Exposure Draft for the *Dredging Industry Award 2016* ('the Exposure Draft') as published on 18 December 2015:
  - Australian Workers Union (**AWU**)<sup>1</sup>
  - W G McNally Jones Staff on behalf of the Maritime Union of Australia (**MUA**)<sup>2</sup>
3. The AWU has read the MUA's submissions, and has not found any significant conflict between the parties. Our submissions in reply appear below, and are intended to clarify the positions of the parties.

**Reply Submissions**

4. The AWU support the following submissions of the MUA without the need for further comment:
  - Paragraph 2 regarding clause **6.3**
  - Paragraph 6 regarding clause **11.2(h)(ii)**
  - Paragraph 7 regarding clause **11.2(j)(ii)**
  - Paragraph 8 regarding clause **11.3(b)(iv)**

**Agreement to vary timing of the meal break**

5. **Clause 9.2(a) [MUA paragraph 1]:** The AWU agrees that a decision to delay a break should be between the employer and the majority of

<sup>1</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014223-sub-AWU-18042016.pdf>

<sup>2</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014223-sub-MUA-14042016.pdf>

employees affected by the agreement. This is not inconsistent with our own submissions, but could be adopted into our proposed clause<sup>3</sup> as follows:

*Parties to such an agreement include a majority of the relevant employee(s) affected by the agreement, together with the master, or the engineer, or their representative.*

### **Notice of termination required**

6. **Clause 6.5(a) [MUA, paragraph 3]:** In response to the question posed in the Exposure Draft regarding the inclusion of the words ‘former full-time or part-time employee’, the MUA say this clause is clear, and have not noted any issues in relation to this clause. The AWU refer to paragraph 6 of our submissions on the Exposure Draft, and our proposal to remove clause 6.5(a)(ii):

*Clause 6.5(a)(ii) We are concerned this clause purports to exclude the NES under section 117 of the FWA – requirement for notice of termination or payment in lieu. If an employee is engaged on a full-time or part-time basis, but then deemed a casual employee if they are dismissed on their first day (per subsection (i)), or within 4 weeks (per subsection (ii)), then they appear to have lost an entitlement to the prescribed period of notice – 1 week in either case. It should be removed.*

### **Navigation of clauses relating to the meal break**

7. **Clause 9.3 [MUA, paragraph 4]:** Parties agree that clauses 9.2(e) and 9.2(c) are exceptions to the overriding rule at 9.3. The MUA have suggested amendment to clause 9.3 to refer to the exception clauses. The AWU prefers the MUA’s wording to the Exposure Draft wording, but would prefer the clause was deleted entirely. We have made a number of suggestions relating to these three clauses at paragraphs 15 -19 of our Exposure Draft submissions in order to improve navigation between clauses, while preserving the overriding rule and exceptions.

### **Shiftwork penalties**

8. **Clause 13.3 [MUA, paragraph 9]:** The MUA does not consider it necessary to convert the shift work penalties to include the ‘ordinary rate’ instead of the ‘standard rate’. The AWU *would* prefer the conversion, particularly in order to capture the all-purpose allowance for an employee entitled to both the allowance and the shiftwork penalty.<sup>4</sup>
9. **Schedule E, [MUA, paragraph 10]:** The AWU did not provide submissions in relation to whether the definition of ‘shiftworker’ in Schedule E applies for the purpose of the National Employment

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<sup>3</sup> AWU Exposure Draft submissions, paragraph 14.

<sup>4</sup> AWU Exposure Draft submissions, paragraph 28.

Standards (NES). The MUA have clarified that the work pattern set out at clause 8.2(b) should be used for the purpose of the NES. We understand this to be in reference to the averaging of hours under section 63(2) of the *Fair Work Act 2009* (Cth). We agree. As long as the weekly hours of an employee amount to 38 hours when averaged over a specified period, the pattern set out under this award is consistent with the NES.

**END**

A handwritten signature in black ink, appearing to read 'R. Walsh', written in a cursive style.

Roushan Walsh  
**NATIONAL LEGAL OFFICER**