



5 May 2016

Associate to Justice Ross
Fair Work Commission
11 Exhibition St
Melbourne VIC 3000

Email: amod@fwc.gov.au

Dear Associate to Justice Ross,

Re: AM2014/241 Ports Harbours and Enclosed Water Vessels Award- Technical and Drafting Issues

We refer to the amended timetable outlined in a statement issued by President Ross on 23 March 2016 relating to submissions on technical and drafting issues in published Group 3 Award exposure drafts.

Maritime Industry Australia Ltd (MIAL) represents employers of employees performing work in the maritime industry covered by the Ports Harbours and Enclosed Water Vessel Award (PHEWV Award).

On 14 April 2016 MIAL wrote to the Commission in response to the exposure draft issued for the PHEWV Award. MIAL's response to the submissions made by other parties in relation to the exposure draft, and questions highlighted within them, is set out below.

Clause 6.4(e)

In response to the query contained in the exposure draft about the capacity of a part-time employee working additional hours that are not classed as overtime, MIAL understands that industry arrangements in the past have facilitated the working of additional hours, and it is for this reason that the wording in clause 6.4(e) may have been retained. MIAL notes the reference to pre-reform awards in NSW highlighted by Business SA.

The span of hours during which ordinary hours may be worked is contained at clause 7.2. Part time employees could work additional hours within the span of ordinary hours, depending on their roster and usual hours. It is suggested that the proposal by the Australian Workers' Union (AWU) in their correspondence dated 18 April 2016 would facilitate this practice.

Clause 9 Minimum Wages

As identified by the MUA, the scheduled relating to crane drivers appears to have derived from the *Motor Boats and Small Tugs (State) Award (AN120350)*. MIAL submits this clause should be amended to read under and including 20,000 tonnes as the rate of pay for a crane driver.

In MIAL's correspondence dated 14 April 2016 it was indicated that MIAL may be in a better position to comment after the conclusion of Full Bench proceedings in relation to the PHEWV Award

in relation to classification definitions. MIAL notes that a number of other interested parties have indicated that they do not consider definitions are necessary, and is content with this position, subject to reserving its position should the definitions currently contained in the PHEWV Award change.

Clause 10 expense and work related allowances

MIAL agrees with the submissions of other parties with respect to classification of 10.1(e) and (f) being expense related allowances and 10.1(o) is a work related allowance.

Clause 10.1(o) Waiting orders

MIAL notes that the interested parties have provided different response to whether this clause needs to be updated to take into account mobile phones. In its correspondence dated 14 April 2016, MIAL proposed consideration of a mechanism for payment under this provision. Given other parties do not agree, MIAL does not press this suggestion.

Clause 10.1(p) Towing

The exposure draft contains a note requesting views as to whether references to normal wage should be replaced with “ordinary hourly rate”. MIAL indicated that terminology within the PHEWV Award should be consistent. The submission of Business SA at paragraph 12.2.7 has clarified the effect of the proposed change which would amount to a change to the substance of the entitlement rather than an alignment of terminology and in such circumstances, the clause should not be amended.

Clause 10.1(j) slipway etc..

This clause refers to a slipway allowance that was payable to junior employees. It appears this clause may have been derived from the *Deckhands (Passenger Ferries Launches and Barges) Award (AN160097)*. In this pre-reform award, junior employees up to 20 years of age were paid a percentage of the adult deckhand rate. In this award, the allowance was only payable to junior employees and not adult employees. In the absence of junior employees being defined under the PHEWV Award, this allowance appears redundant.

Clause 12 Overtime and Penalty rates

MIAL opposes the amendments suggested by the AWU in paragraph 12 of its correspondence dated 18 April 2016. The table at 12.2 sets out the percentage of ordinary hourly rate to be paid to employees in certain circumstances. The proposal from the AWU will effectively increase the rate payable on Saturday for any time worked in excess of 3 hours. It is clear that any hours (howsoever described) worked on a Saturday are to be paid at 150% of the ordinary hourly rate. What is proposed is a substantive amendment and is not a technical or drafting issue.

It is unclear what benefit including a span of hours for ordinary hours on a weekend would have in clarifying the award. Clause 7.2 determines ordinary hours of work. Removing the reference to “ordinary hours” in the table referencing ordinary hours and overtime Weekend and Public Holidays is likely to alleviate the confusion.

Clause 13 shiftwork

MIAL notes that this matter is currently the subject of proceedings in AM2014/197 which will likely provide greater clarity in respect to these matters. MIAL's understanding is that the PHEVV Award does not provide for a shiftwork rate on weekends.

Yours sincerely,



Sarah Cerche
Maritime Industry Australia Ltd