

## FAIR WORK COMMISSION

Matter No: AM2014/241

### *Fair Work Act 2009*

s.156 – 4 yearly review of modern awards: Ports, Harbours and Enclosed Water Vessels Award 2010

### SUBMISSIONS OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION – THE MARITIME UNION OF AUSTRALIA DIVISION

#### Background

1. These submissions are advanced by the Construction, Forestry, Maritime, Mining and Energy Union – The Maritime Union of Australia Division (**MUA**) for the purposes of a conference convened by the FWC on 20 December 2018.

#### Amendments sought by AFEI

2. There are five (5) clauses in the current exposure draft that AFEI seeks to amend.

#### Clause 7.2 – Span of hours

3. AFEI seeks to expand the span of hours as marked in **red** below:

#### **7.2 Span of hours**

Ordinary hours may be worked:

- (a) between 6.00am and 6.00pm for up to eight hours per day, Monday to Friday inclusive; **or**
  - (b) **in accordance with a shift of ordinary hours as per clause 13 'Shiftwork' of this award, or on a Saturday, a Sunday or a public holiday.**
4. The span of hours is set out in clause 12.2 of the current exposure draft. It has not changed since it was first inserted into the award. The language "may be worked" in the clause is common to other modern awards<sup>1</sup> when describing a

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<sup>1</sup> See clause 21.1(b) of the *Dry Cleaning and Laundry Industry Award 2010*; clause 20.3 of the *Dredging Industry Award 2010*; clause 25.2(a) of the *Pharmacy Industry Award 2010*; clause 20.2 of the *Marine Towing Award 2010*; clause 25.1(b) of the *Clerks – Private Sector Award 2010*; clause 27.2(a) of the *General Retail Industry Award 2010*; and clause 21.3 of the *Children's Services Award 2010*.

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span of hours and is understood as determining the only times that ordinary hours may be worked.

5. Shiftwork by its very nature is different to ordinary hours of work and appropriately is not referred to in the span of ordinary hours of work in modern awards. It is also unclear what is intended by “a shift of ordinary hours.” Clause 13.1 defines the types of shift by reference to start and finish times. There is no reference in this clause to “ordinary hours.”
6. AFEI’s proposed change to this clause is also contrary to clause 12.1 which provides that:

#### **12.1 Entitlement to payment for overtime**

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

7. AFEI’s proposed amendment to clause 7.2 should be rejected. Any concern as to the use of the word “may” in the clause could be resolved by the amendment proposed by the MUA, namely:

#### **7.2 Span of hours**

Ordinary hours may **only** be worked between 6.00am and 6.00pm for up to eight hours per day, Monday to Friday **inclusive**.

#### Clause 12.1 – entitlement to payment for overtime

8. No explanation is given as to why this clause should be deleted. It provides vital clarity as to when overtime is payable.
9. AFEI’s proposed amendment to clause 12.1 should be rejected.

#### Clause 12.2 – payment for overtime

10. The additional words sought to be inserted by AFEI before the table provided unnecessary detail and are likely to cause confusion. These words should not be included.
11. It is noted that there is agreement as to the rate that is applicable for work performed on Saturdays, Sundays and public holidays.
12. AFEI’s proposed amendment to clause 12.2 should be rejected.

#### Clause 13.2 – shiftwork rates

13. AFEI’s proposed amendments not only lack clarity but continue to confuse by referring to “ordinary hours worked on any shift.” Shiftwork is defined in clause 13.1 by reference to start and finish times. There is no reference in this clause

to “ordinary hours.” A reference to ordinary hours worked on a shift is unnecessarily confusing.

14. AFEI’s proposed amendment to clause 13.2 should be rejected.

Definition of “ordinary hours of work”

15. The current exposure draft contains two slightly different definitions of “ordinary hours of work” – one in clause A.1.1 of schedule A and the other in Schedule D. It would be preferable that there is only one definition. The MUA favours the definition in schedule D namely:

**ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 9, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

**Conclusion**

16. The MUA opposes each of the proposed amendments sought by AFEI as set out in their submissions dated 31 October 2018.

Dated: 20 December 2018



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