

Fair Work Commission
Terrace Tower, 80 William Street
East Sydney NSW 2011
By email: amod@fwc.gov.au

24 November 2015

Re: AM2014/84 AWU submissions on the Exposure Draft for the *Professional Diving (Industrial) Award 2015*

Background

1. These submissions follow the 4 Yearly Review of Modern Awards Full Bench's Decision on 23 October 2015 regarding Group 1C, 1D and 1E awards.
2. This Decision directed parties to file feedback on the revised Exposure Drafts by 4:00pm on 20 November 2015.
3. The Australian Workers' Union's (AWU) submissions in relation to the Exposure Draft for the *Professional Diving (Industrial) Award 2015* (Exposure Draft) as republished on 2 November 2015 appear below.

Technical issues

4. Clause 13.2: It is unclear why this clause refers to "250% of the **casual** hourly rate".
5. Clause 15.3: There is a typo – the provision should read: "the employer may withhold **from** any money due to the employee..."

Ordinary hour issues

6. The current award contains industry-specific ordinary hours of work provisions in clause 21 for inshore divers and offshore divers. These specific provisions should be afforded significantly more weight than the general references to hours of work for different types of employment in clause 10. This is particularly the case when the provisions in clause 21 are consistent with the predecessor Federal award.

7. We submit the following amendments would provide a fair and reasonable resolution to the existing ambiguity:

- Clause 6.2 (a): This should be amended read: “A full-time employee is engaged to work the ordinary hours specified in clause 19 for Inshore divers and clause 24 for Offshore divers”.

This amendment preserves the 33 hour week for Inshore divers which is clearly intended to operate under the current award and is what operated under the predecessor Federal award. An amendment to this provision should require an evidentiary case as per the variation pursued for the *Stevedoring Industry Award 2010*.¹

- Clause 6.3 (c): This should be amended to read:

A casual Inshore diver must be paid the minimum hourly rate in clause 21.1 plus a casual loading of 25%.

A casual Offshore diver must be paid per hour the Total hourly rate in Schedule B.3.1 plus a casual loading of 25%.

These amendments simply entitle casual employees to the appropriate full-time rate hourly rate plus a casual loading of 25%. This entitlement for casual Offshore divers would be less generous than what applied under the predecessor Federal award.²



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¹ *Stevedoring Industry Award 2010* [2015] FWCFB 1729

² See clause 13.3.3 (d) and 19.2.2 of the *Professional Divers’ – Maritime Union of Australia Award 2002*