

Summary of parties' positions in respect of item 20 of the summary of submissions

[1] In the exposure draft based on the *Ports, Harbours and Enclosed Water Vessels Award 2010* (Ports award), parties were asked the following question in respect of the towing allowance at clause 10.1(p)(iii) (what is now clause 10.1(n)(iii) of the [revised exposure draft](#)):

Parties are asked whether the references to “normal wage” in clause 10.1(p)(iii) should be to “ordinary hourly rate”

The Unions' position

[2] The Australian Workers' Union (AWU) and the Maritime Union of Australia (MUA) (collectively, the Unions) support the use of the term “ordinary” as opposed to the term “normal”, however the parties differ in terms of whether the allowance should be expressed as an hourly rate or not.¹

[3] The MUA submitted that the ‘proposed reference to “hourly rate” is inconsistent with the fact that it is paid for each day’ and proposed that the words “normal wage for each day” be replaced with the words “ordinary rate of pay for each day” (emphasis added).² By contrast, the AWU submitted that the allowance ‘should be expressed as an hourly rate’ and agreed that the words “ordinary hourly rate” should be inserted. In addition, the AWU proposed that the clause be amended to include *both* the daily and hourly rate.³ Further, the AWU submitted that expressing the allowance as an hourly rate:

‘...will encourage its correct use when calculating the hours the employee performs for “part of a day” as set out under this clause, or other entitlements that may only attach to a portion of an employee’s daily hours such as overtime.’⁴

[4] In its reply submission the AWU agreed with the MUA in that the MUA’s proposal reflected ‘the updated language of the modern award’ however maintained its initial position that the words used should be ““ordinary hourly rate” which is the defined term at A.1.1 and incorporates any applicable all-purposes allowance’.⁵

[5] The AWU opposed the Business SA position (set out at paragraph [6] below) and submitted as follows:

‘Although this allowance is not an all purpose allowance, it must be paid in addition to the allowances for all purposes at subclause (i) and (ii). For example, an employee on board a vessel carrying explosives, *and* proceeding beyond the limits of a harbour, river or bay -- should be paid the 25% loading at subclause (iii) and the all-purpose allowance at subclause (i). For this reason, clause 10.1(p)(iii) should refer to the “ordinary hourly rate”.’⁶

The Employers' position

[6] Business SA and Maritime Industry Australia Limited (MIAL) (collectively, the Employers) oppose the Unions’ position on the basis that the towing allowance is not an all purpose allowance and therefore use of the term “ordinary” is inappropriate. Business SA submitted that the “ordinary hourly rate” refers to an ‘employee’s minimum wage in addition to any all purpose allowances’ and as the allowance in question ‘does not apply for all purposes [it] should...not be paid at the “ordinary hourly rate”’.⁷

[7] MIAL initially submitted that ‘[a]s far as possible...terminology within the award should be consistent’.⁸ In its reply submission, it clarified its position opposing the proposed change and advanced that the amendment ‘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’.⁹

¹ AWU [submission – exposure draft](#) – 18 April 2016 at paras. 11 and 12 on p. 4; and MUA [submission – exposure draft](#) – 14 April 2016 at para. 8.

² MUA [submission – exposure draft](#) – 14 April 2016 at para. 8.

³ AWU [submission – exposure draft](#) – 18 April 2016 at paras. 11 and 12 on p. 4.

⁴ AWU [submission – exposure draft](#) – 18 April 2016 at para. 5 on p. 3 and paras. 11 and 12 on p. 4. Note: at paragraph 12 of its submission, the AWU refers to its ‘reasons set out above at paragraphs 6 and 12’. It appears that this may be an error and that the intended paragraph references may have been to paragraphs 5 (submissions in respect of the dual capacity allowance) and 11.

⁵ AWU [reply submission](#) – 5 May 2016 at paras. 8, 18.

⁶ AWU [reply submission](#) – 5 May 2016 at para. 27.

⁷ Business SA [submission – exposure draft](#) – 15 April 2016 at para.12.2.7.

⁸ MIAL [submission – exposure draft](#) – 14 April 2016, p. 4.

⁹ MIAL [reply submission](#) – 5 May 2016 at p. 2.