



Title of matter: 4 yearly review of modern awards – finalisation of exposure drafts – tranche 3 awards

Section: s.156 – 4 yearly review of modern awards

Matter number: AM2019/17

Award: *Ports, Harbours and Enclosed Water Vessels Award 2010*

Document: Submission of the *Australian Federation of Employers and Industries (AFEI)*, the *Commercial Vessel Association (NSW) (CVA)*, the *Association of Marine Park Tourism Operators (AMPTO)* (collectively, the AFEI parties).

Filed: Pursuant to Decision [2020] FWCFB 421 (29 January 2020) at [8].

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1. In a written submission filed 31 October 2018 in AM2014/241,¹ the AFEI parties addressed the outstanding issue of the rate of pay for work on weekends and incidental matters and presented proposals for clarifying amendments to the Exposure draft as it stood at that date.² A decision on the matters addressed in those submissions is pending and the AFEI parties understand that such decision will be made in due course.³
2. Since 31 October 2018, the Exposure Draft has undergone further changes notably to clause numbering. As a consequence, the proposals for clarifying amendments in the submission filed 31 October 2018 require variation to take into account the clause numbering in the Exposure Draft published 29 January 2020 and the definition of '**ordinary hourly rate**' at clause 2 of the said draft.
3. Therefore, in the event that the Commission finds in favour of the AFEI parties with regard to the submissions filed 31 October 2018 in AM2014/241 and orders variations as proposed therein, the form of the amendments to the Exposure Draft published 29 January 2020 will be as follows:
 - A. Delete cl. 18.1 and cl. 18.2 of the Exposure Draft published 29 January 2020 and replace with new cl. 18.1 (and renumber existing cl.18.3 and 18.4 accordingly):

18.1 Employees will be paid at the applicable rates shown in the table below for:

- (a) *any overtime worked Monday to Friday;*
- (b) *any ordinary hours and any overtime worked on a Saturday;*
- (c) *any ordinary hours and any overtime worked on a Sunday;*
- (d) *any ordinary hours and any overtime worked on a public holiday.*

	% of ordinary hourly rate of pay <i>(see definition of 'ordinary hourly rate' at clause 2 'Definitions'.</i>
Overtime	
<i>Monday to Friday: – first three hours</i>	<i>150</i>
<i>– after three hours</i>	<i>200</i>
Ordinary hours and overtime	
<i>Saturday</i>	<i>150</i>
<i>Sunday</i>	<i>200</i>
<i>Public Holiday</i>	<i>250</i>

¹ Filed pursuant to Decision [2018] FWCFB 6368 (15 October 2018) at [175] – [176].

² See proposed clarifying amendments in AFEI submission filed 31 October 2018 in AM2014/214 at [36].

³ See Decision [2019] FWCFB 932 at [102].

- B. Replace cl. 12.2 of the Exposure Draft published 29 January 2020 with:

12.2 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 19 'Shiftwork' of this award, or on a Saturday, a Sunday or a public holiday.*

- C. Replace cl. 19.2 of the Exposure Draft published 29 January 2020 with the following:

19.2 Shiftwork rates

- (a) *Except where the ordinary hours are worked on a Saturday, a Sunday or a public holiday, employees will be paid the following rates for ordinary hours worked on any shift type defined at clause 19.1 of this award:*

Type of shift	% of the ordinary hourly rate (see definition of ordinary hourly rate clause 2 'Definitions').
<i>Afternoon shift</i>	115
<i>Night shift</i>	115
<i>Permanent night shift</i>	130

Where the ordinary hours are worked on a Saturday, a Sunday or a public holiday, the employee will be paid at the applicable rate set out in clause 18.1 of this award.

Other matters concerning the Exposure Draft

Coverage

4. Clause 4.2 concerning coverage contains a reference to 'the above awards', whereas the awards in question are listed 'below' at clause 4.3.

Casual loading

5. Clause 11.2 of the Exposure Draft omits the reference in the *Ports Harbours and Enclosed Waters Vessels Award 2010* (the Award) to the circumstances under which the casual loading is currently paid, that is 'within the ordinary hours of work pursuant to clause 18'.
6. This omission in the exposure draft involves a substantive change from the current Award, and if adopted, would significantly increase the overall cost of casual employment particularly for ordinary hours on shiftwork and weekends.

7. To avoid inadvertently changing the effect of the Award's current provisions, the AFEI parties propose that the clause 11.2 of the Exposure Draft be amended as follows:

- In clause 11.2 (a) after the words '*For each ordinary hour worked*' insert the words 'pursuant to clause 12.2.'
- In the event that the Commission adopts the AFEI Parties proposed amendment in paragraph 3.B of this submission, instead insert the words 'pursuant to clause 12.2(a)'.

All-purpose allowances (clause 16.2 (a))

8. The parties propose that the dual capacity allowances should not be included in clause 16.2(a), which is concerned with all-purpose allowances.

9. The Award does not currently identify the dual capacity allowances as an all-purpose allowance, as it does for the towing allowances provided in clause 16.2(a) (ii) and (iii) of the Exposure Draft.

10. The inclusion of the dual capacity allowance in clause 16.2(a) is inconsistent with Clause 14.4 of the current Award and Clause 16.2(d) of the exposure draft which clarify that it is only treated as part of the ordinary rate in specific circumstances, that is '*for the purpose of calculating overtime, annual leave, sick leave and long service leave*'.
