

FAIR WORK COMMISSION

Matter No: AM2016/5

Modern Award Review:

Ports, Harbours and Enclosed Water Vessels Modern Award 2010
Seagoing Industry Award 2010

SUBMISSIONS OF THE AUSTRALIAN MARITIME OFFICERS' UNION

1. The AMOU has an interest in claims being advanced in two of the Modern Awards the subject of proceedings in Matter No. AM2016/5:
 - a. The claim by AIMPE¹ for changes to the pay rates for the classification of Engineer in the *Ports Harbours and Enclosed Water Vessels Modern Award 2010* (the AMOU does not wish to be heard on the other AIMPE claims); and
 - b. The claim by Sea Swift:
 - i. For changes to the coverage provisions of the *Seagoing Industry Award 2010*, the *Marine Towing Award 2010*, and the *Ports Harbours and Enclosed Water Vessels Award 2010*²;
 - ii. The claim by Sea Swift for the inclusion of a new small ships classification scale in the *Seagoing Industry Award* (the AMOU also opposes the slight variation to this proposal described in the AIMPE submission); and
 - iii. The claim by Sea Swift for the inclusion of a “casual” rate in the *Seagoing Industry Award*³.
2. The AMOU:
 - a. Opposes the proposal by AIMPE to vary the existing wage rates for the classification of “Engineer” in the *Ports Harbours and Enclosed Water Vessels Award 2010*; and
 - b. Opposes each aspect of the Application by Sea Swift.
3. The submissions address each claim in turn.

¹ the Australian Institute of Marine and Power Engineers

² Sea Swift proposed determinations for each of the *Seagoing Industry Award 2010*, the *Marine Towing Award 2010*, and the *Ports Harbours and Enclosed Water Vessels Award 2010* contained in the Sea Swift submission dated 12 April 2016

³ Sea Swift Submissions dated 15 April 2016 (**the Sea Swift Sub**)

Ports Harbours and Enclosed Water Vessels Award 2010

AIMPE Wage Relativity Variation.

4. The modern awards objective applies to the Review⁴, as does the minimum wages objective⁵. In the context of a Modern Award Review the Commission must take account the rate of the national minimum wage as currently set in a national minimum wage order⁶, and may vary modern award minimum wages “*only if ... satisfied that the variation ... is justified by work value reasons*” (s 156(3)). The expression *work value reasons* is given meaning by s 156(4):

“Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;*
- (b) the level of skill or responsibility involved in doing the work;*
- (c) the conditions under which the work is done.”*

5. In the Full Bench decision (*Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189; [2014] FWCFB 1788) setting the principles for conducting the Review, it was observed (at [23], my emphasis):

“The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a ‘stable’ modern award system (s.134(1)(g)). The need for a ‘stable’ modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI’s submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.”

6. The AIMPE proposal to vary the minimum wage rate for the classification of Engineer so as to make it equal to that of Master (i.e a relativity of a 100%) requires “*increasing the wage rate of “Engineers” to the same level as “Master”*” (AIMPE 10/5/2016 at [7]). The same can be said of the inclusion of an entirely new classification of “Chief Engineer” so as to provide an increased rate of pay for some Engineers (apparently covering “the only or senior engineer on a vessel”: AIMPE 10/5/2016 at [8]): that proposal involves

⁴ s 134(2)(a), *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189 at [29]

⁵ s 284(2)(b)

⁶ s 135(2)

increasing the modern award minimum wages⁷ for that cadre identified in the proposal as “Chief Engineer”.

7. The foundation for AIMPE’s claim (submission dated 2 March 2015, point 2 page 2) is that *“In the making of the Award in 2010 the wrong relativity has been applied between Master and Engineer”*. No evidence or submission was advanced in AIMPE’s initial submission in support of that contention. The contention an “anomaly” arose in the Award Modernisation process was, at that time, premised on no more than an assertion that the “*vast majority*” of the transitional instruments that preceded the Award had a 100% relativity between Master and Engineer classifications.
8. AIMPE’s substantive submissions (dated 10 May 2016, paragraphs [5] to [9]) take the matter no further. The contention that the current relativity between Master and Engineer is an “anomaly” deriving from “the wrong relativity” being applied by the Full Bench in the Award Modernisation Process is again premised on the idea that the vast majority of transitional instruments provided a 100% relativity between Master and Engineer classifications. AIMPE contends its proposal ought be accepted in the context of the Review *“to put in place what would have been consistent with the principles of the Award Modernisation process...”* (10/5/2016 AIMPE Sub at [9]).
9. AIMPE’s application must fail at the outset.
10. AIMPE has not advanced any submission nor evidence that addresses “*work value reasons*” as required by s 156: not a single word has been advanced by AIMPE describing the “*nature*” of the work that would be covered by the proposal, or “*the level of skill or responsibility involved in doing the work*”, or “*the conditions under which the work is done*”, let alone how the work and work environment of those in the Engineer classification compares to that required of the classification of Master, so as to justify an increase in the minimum award wage for that classification or a new classification of Chief Engineer (which has the effect of creating a new and increased minimum wage for that newly created classification).
11. AIMPE makes no submission (or evidence) to demonstrate why it is *necessary* to make either of the variations it proposes to enable the existing *Ports Harbours and Enclosed Water Vessels Award 2010 “to achieve the modern awards objective”*⁸.
12. The AIMPE contention is directly against the principles established to guide the Review. In *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189 the Full Bench observed at [24] (footnotes omitted, emphasis added):

“In conducting the Review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Pt 10A of the Workplace

⁷ within the meaning of s 284(3)

⁸ s 138 and *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189 at [36] – [39], and [60] point 5

Relations Act 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see item 4 of Sch 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective. The considerations specified in the legislative test applied by the AIRC in the Pt 10A process is, in a number of important respects, identical or similar to the modern awards objective in s 134 of the FW Act. In the Review the Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time that it was made."

13. The Full Bench emphasised⁴ that whilst not strictly bound by earlier decisions, as a matter of policy and sound administration the Commission should not proceed "in isolation unencumbered by previous Commission decisions", that it should "take into account previous decisions relevant to any contested issue" in the Review, and observed "Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so"⁹.
14. The contention of AIMPE is remarkable and ought not be accepted for a number of reasons, including:
 - a. In the context of the Award Modernisation process, the AIMPE position advanced throughout included the relativities that are now contained in the *Ports, Harbours and Enclosed Waters Vessels Award 2010*. Copies of each of the submissions advanced by the AIMPE in the Award Modernisation process referable to the Ports Harbours and Enclosed Waters Vessels Award 2010 (and their proposed Draft Award), before and after the publication of the Exposure Draft on 22 May 2009 (including the Statement accompanying the Exposure Draft and the Stage 3 Decision), are attached to this submission and marked **AMOU1 to AMOU8**. The contention that the Full Bench by making an award with the very relativities then advanced by the AIMPE (notably jointly with the MUA and noting both were represented by a well respected law firm with specialty in employment and industrial law) applied the "wrong" relativity, and as having given rise to an "anomaly", is, with respect, disingenuous and ought be rejected.
 - b. The decision of the AIRC Full Bench making the *Ports, Harbours and Enclosed Waters Vessels Award 2010* ((2009) 187 IR 192; [2009] AIRCFB 826) makes plain the classification structures and the wage rates were specifically the subject of consideration by the Full Bench (notably based on submissions made by, amongst others, the AIMPE: footnotes omitted, emphasis added):

Ports, Harbours and Enclosed Vessels Award 2010

[219] The Maritime Union of Australia (MUA) and The Australian Institute of Marine and Power Engineers (AIMPE) sought to retitle the award as the Maritime Industry General Award to reflect a desire that the award apply to vessels which venture

⁹ *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189 at [27]

beyond ports and harbours. The current scope clause is not so confined but we have decided to make this clearer by adding additional words to the definition of the industry. We decide below to confirm the Marine Tourism and Charter Vessels Award 2010. Employers and employees covered by that award will be excluded from the provisions of this award. It is unnecessary to maintain an exclusion with respect to the Sugar Industry Award 2010. Exclusion of employees of local governments and maintenance contractors have been inserted. We consider that the existing title of the award is preferable to the alternative suggested.

[220] We have deleted the definitions for classifications as submitted by the MUA and AIMPE and the definitions were unnecessary in the circumstances of this employment. Other minor changes have been made.

[221] We recognise the impact of the wage rates we have established for this award on employers covered by the Motor Ferries State Award and Wire Drawn Ferries (State) Award. However a consideration of the wage rates for all current awards has led us to the conclusion that the rates we have adopted are more representative of rates in existing minimum rates prescriptions. Transitional arrangements will ameliorate the impact to some extent.

- c. Finally, the 2012 Transitional Review was directed towards, amongst other things, anomalies that arose out of the Award Modernisation process¹⁰. It is telling that no submission was advanced by AIMPE in the context of the Transitional Review that the wage rates were the product of an “anomaly” arising from the Award Modernisation process, or the application of the “wrong” relativity between the classifications of Master and Engineer. Deputy President Smith observed in giving decision that “*No applications were received to specifically vary the 37 modern awards that are the subject of these proceedings*”¹¹. The Determination issued by DP Smith on 27 September 2012¹² made only minor typographical variations to the Award. With those variations made, DP Smith observed (at [9]):

[9] With the exception of those matters which are reserved for determinations by the Full Bench [that related to the Seagoing Industry Award, referred to below], I determine that there should be a number of variations to ensure that the modern awards:

- *achieve the modern awards objective; and*

¹⁰ Item 6 (2)(b) of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth); Award Review Process 2012 (2012) 223 IR 49 at [40] – [41], [45] – [48], [82] – [100], [103].

¹¹ [2012] FWA 8271 at [3], reflecting the observations made by DP Smith in transcript on 21 September 2012 at PN103

¹² PR529165

- *are operating effectively, without anomalies or technical problems arising from the Part 10A award modernisation process.*

The pay rate of the classification of Engineer appears to have been such an anomaly that AIMPE did not even enter an appearance in the 2012 Transitional Review proceedings.

15. There was no “anomaly” in the Award Modernisation process and the Full Bench of the AIRC was not “wrong” to have exercised the broad value judgments required of it in the context of the Award Modernisation process by making the *Ports, Harbours and Enclosed Waters Vessels Award 2010* in the form it did.
16. AIMPE has advanced no basis to depart from the prima facie position that the current minimum rates in the *Ports Harbours and Enclosed Waters Vessels Award* reflect the modern awards objective, nor have they advanced cogent reasons for departing from the decision of the Award Modernisation Full Bench (or the decision of the Transitional Review bench) that the rates of pay reflect appropriate and fair minima for the identified classifications, nor have they shown why it is necessary to make the variation/s it seeks to ensure that the Award achieve the Modern Awards Objective.
17. With respect, the AIMPE claim is no more than an unsupported and unsupportable grab for an increase in the minimum wage for the classification in the Ports, Harbours and Enclosed Waters Vessels Award that it centrally represents. There is no contention that engages with the Modern Award objective in s 134, nor the preconditions for increasing minimum wage rates are required by s 156 (nor evidence that goes to demonstrate a work value basis for the adjustment in minimum rates), nor has it show why it is necessary to make a *determination varying modern award minimum wages* outside the system of annual wage reviews to achieve the modern awards objective (s 138). The AIMPE claim should be dismissed.

Seagoing Industry Award 2010

Coverage Issue

18. The Commission cannot vary the Seagoing Industry Award 2010 in the manner contemplated by cl 3.5A of the proposed determination by Sea Swift. A coverage clause referable to the operation of “*particular vessels*”¹³ is not consistent with s 143 of the Act¹⁴: it does not create a coverage provision “*setting out the employers [and] employees...covered by the award, in accordance with this section*”, meaning “*specified employers*” and “*specified employees of employers covered*” by reference to the “*name or by inclusion in a specific class or specified classes*” of employer (or employee).
19. Sea Swift is described in its own representative’s correspondence as:

¹³ as characterised by Sea Swift at Sea Swift Sub at [42]

¹⁴ see s 143(2), (5) and (6)

- a. having “substantial commercial marine operations in far North Queensland, Torres Strait and the Northern Territory”¹⁵; and being
 - b. “perhaps unique in the whole of Australia”¹⁶, it seems because it has chosen to organise itself in such a way that “substantial parts of the Sea Swift operations which, if conducted as a stand-alone operation by a separate employer, would be covered by an entirely different award (such as the Marine Towing Award 2010 and/or the Ports Harbours etc Award 2010)”¹⁷:
20. Its application to fundamentally refashion the industry descriptors and coverage provisions of a number of Modern Awards (the Seagoing Industry Award 2010, the Ports Harbours and Enclosed Vessels Award 2010, and the Marine Towing Award 2010¹⁸), and its other claims, are designed to meet its “unique” needs, apparently in light of its belated realisation that the Seagoing Industry Award (which it evidently has not been applying for a number of years¹⁹) provided the minimum terms and conditions for its employees (in particular, in consequence of the decision of the Full Bench in *Maritime Union of Australia & ors v Sea Swift Pty Ltd T/A Sea Swift* [2016] FWCFB 651²⁰).
21. The function of the Full Bench in the Review is to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, and to make changes to an Award only to the extent it is necessary to enable it to achieve the modern awards objective. The Commission would not accept that:
- a. It is “appropriate”²¹ to fundamentally refashion the settled coverage arrangements between the Seagoing Industry Award 2010, the Marine Towing Award 2010, and the Ports Harbours and Enclosed Waters Vessels Award 2010, the interaction of which was very recently settled by a decision of the Full Bench²², to meet the convenience of a single employer that has chosen to operate what it describes as a “unique” business; or
 - b. It is necessary²³ to vary the coverage of each of these Awards (noting they are each prima facie are taken to meet the modern awards objective²⁴) so to enable the Seagoing Industry Award 2010, the Marine Towing Award 2010, and the

¹⁵ Letter from Livingstones to the Commission dated 1 April 2016

¹⁶ *ibid* pg 2; the Full Bench would also note that the business was described as “relatively unique” or “quite unique” by Commissioner Simpson in [2015] FWC 6644 at [78] and [94]

¹⁷ *ibid* pg 1-2; described further in *Sea Swift Sub* at [31] and [16] – [21]

¹⁸ *Sea Swift Sub* at [5]

¹⁹ see the description of the use of casual employees in the Statement of Mr Lino Bruno at [42] – [44], an employee type not provided for by the *Seagoing Industry Award 2010*.

²⁰ Letter from Livingstones to the Commission dated 1 April 2016, pg 1

²¹ noting the special rule that applies in this context: see s 163(1)

²² *Maritime Union of Australia & ors v Sea Swift Pty Ltd T/A Sea Swift* [2016] FWCFB 651

²³ s 138; *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189 at [36] – [39], and [60] point 5

²⁴ *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189 at [24], extracted above

Ports Harbours and Enclosed Waters Vessels Award 2010 to meet the modern awards objective.

22. Sea Swift might not like the fact that its operations are captured by the Seagoing Industry Award because its operations wholly or substantively involve *“the operation of vessels trading as cargo vessels, ... which, in the course of such trade or operation, proceed to sea (on voyages outside the limits of bays, harbours or rivers)”*, but that does not make it necessary for the amendments to be made to achieve the modern awards objective. The proposed changes would not make the lines of demarcation between the *Seagoing Industry Award*, the *Ports Harbours and Enclosed Waters Vessels Award* or the *Marine Towage Award* any *“clearer or fairer”*²⁵ (the apparent foundation of the Sea Swift applications in this connection). Even assuming the Commission accepted the proposed descriptors provided a coverage clause consistent with s 143 (contrary to the above submission), the descriptors proposed would make the demarcation lines less clear and more difficult in their application.
23. Sea Swift Sub at [12] – [14] is misconceived. The formulation of words in the Seagoing Industry Award cl 3.1 and 3.6 are standard in other industry awards. They derive from the way in which the Award Modernisation Full Bench set out to meet the requirements of cl 9 of the Minister’s Request²⁶. The precondition to the exclusion contemplated in cl 3.1 of the exposure draft of the Seagoing Industry Award has two elements: the employer must be within the relevant industry (and hence covered) *and* the employee must fall within *the classifications* identified in the modern award. If both preconditions are met, the exclusion applies to that employment and no other modern award can apply to that employee in that particular employment²⁷. In order to determine whether the *first* of those two propositions are met (ie whether the employer is covered), one must have regard to industry definition and the remainder of cl 3, in particular the exclusions. If an employer is *“covered”* by one of the other identified instruments (including the other modern awards), the *Seagoing Industry Award* does not *“cover”* it.
24. Insofar as the *Ports Harbours and Enclosed Water Vessels Industry Award 2010* and the *Marine Towage Award 2010* are concerned²⁸, if the employer is *“wholly or substantially”*²⁹ covered³⁰ by one of the other named modern awards (in each case the list of *“other”* awards including the *Seagoing Industry Award 2010*³¹), then despite the fact parts of the business may fit within a number of industry descriptors the effect of the respective

²⁵ cf Sea Swift Sub at [5]

²⁶ [2008] AIRCFB 717 at [6], noting also the comments of the Full Bench at [15] dealing with rules for avoiding overlap

²⁷ In order for a modern award to *“cover”* an employer or an employee, it must be *“expressed to cover”* the employer or employee (s 48(1)), noting the reference to an award *covering* an employee *“is a reference to the award covering the employee in relation to particular employment”* (s 48(5)).

²⁸ Of course for either of those awards to cover the business of the employer must fit within the *ports, harbours and enclosed water vessels industry* and the *marine towage industry* respectively

²⁹ in this context, using the ordinary meaning of *“of or relating to the essence of a thing; essential, material, or important”* Macquarie Dictionary 4th Ed pg 1405, *“In substance; in one’s substantial nature or existence...; in essence, essentially, intrinsically; in all essential characters or features; in essentials, to all intents and purposes, in the main”* Oxford English Dictionary (online edition)

³⁰ cl 4.1 in each of the existing modern awards

³¹ cll 4.1(e) and 4.1(d) respectively

coverage provisions is that it is the modern award that “*wholly or substantially*” covers the employer’s business that will ultimately cover that employer. Sea Swift acknowledge this at [39]: it is the predominant character of the employers business that will determine its industry coverage.

25. Sea Swift is covered by (and insofar as it relates to classifications covered by it, exclusively covered by) the *Seagoing Industry Award* because it has chosen to operate a mixed business³² via a “*single corporate umbrella*”³³ (mixed in the sense that the elements of its business, looked at in isolation, could fall within different industry descriptions in the various marine awards) does not evidence “*a significant anomaly*”³⁴ in the coverage clauses of the three modern awards. It reflects the fact that the substantial character of its business, despite the fact it is a ‘mixed’ business³⁵, continues to be *the operation of vessels trading as cargo vessels, ...which, in the course of such trade or operation, proceed to sea (on voyages outside the limits of bays, harbours or rivers)*. Sea Swift concedes as much in its submissions (at [32]).
26. That is not an anomaly. That reflects the scheme of modern award coverage for the various facets of the marine industry originally conceived by the Award Modernisation full bench³⁶ and accepted by the large number of industry participants who were engaged in those proceedings. The use of language like “*prima facie coverage*”³⁷ or “*primary coverage*”³⁸ are a complete distraction. There is no such thing as *prima facie coverage*. Each coverage provision in each of the Awards (via their own exclusions) looks to the substantial character of the business of the employer. The Commission would not lose sight of the fact that no other “*genuinely diverse maritime business*”³⁹, or industry association on their behalf, has alleged in these proceedings (or in any prior proceedings) that these amendments are necessary to achieve the modern awards objective, or reflect an anomaly. The Full Bench would not entirely upset the balance in the coverage between these industry awards to meet the needs of a single employer who, no doubt for its own historical reasons, has chosen to conduct a mixed business through a single corporate umbrella: as noted above, it characterises itself as “unique”. The operation of the coverage provisions in these three modern awards is not uncertain or difficult to understand: to the extent it may have been uncertain (and the AMOU’s position is that when looked at collectively, it has never been uncertain), any such uncertainty was resolved by the decision of the Full Bench in *MUA & ors v Sea Swift & Ors* [2016] FWCFB 651.

³² what it characterizes as “*a diverse maritime business*”: Sea Swift Sub at [29]

³³ Sea Swift Sub at [29]

³⁴ cf Sea Swift Sub at [29]

³⁵ in the sense described above, noting this appears to be the aspect of its business that is said to make it unique

³⁶ noting of course the seagoing industry as originally defined was expanded by to include Research vessels by way of Order PR551329 made 11 June 2014.

³⁷ Sea Swift Sub at [34]

³⁸ Sea Swift Sub at [35]

³⁹ Sea Swift Sub at [40]

27. Sea Swift historically operated under State based enterprise awards (or apparently agreements based on it)⁴⁰. Mr Bruno (in substance) describes Sea Swift has having been ignorant of the effect of the enterprise instrument modernisation process under Part 2 of Schedule 6 of the *Fair Work (Transitional and Consequential Amendments) Act 2009*, which would have afforded it the opportunity to apply to make a *modern enterprise award*, if it had applied prior to 31 December 2013⁴¹. It did not. Its enterprise award-based transitional instrument terminated by operation of law on 31 December 2013⁴². It now seeks to have the entire industry scheme varied to meet its convenience and “unique” operations.
28. Each of these modern awards has been in operation for some years. No other employer in any of the three industries has made application in these proceedings contending that it is *necessary* to vary the coverage arrangements between any (let alone all) of these Awards in the manner sought by Sea Swift in order to ensure that they each meet the modern award objective. Each has been through the 2012 Transitional Review. It does not appear any contention was made in that context that there was a need to vary the coverage clauses of any (let alone all) of these Awards to cure an anomaly or to ensure they met the modern awards objective. The *prima facie*⁴³ position is that they each currently meet the modern awards objective. The Full Bench would accept Sea Swift has not demonstrated that it is *necessary* to vary the coverage provisions of these three awards in the manner claimed in order to ensure that they meet the modern awards objective. The claim to vary the coverage provisions of each of these three instruments should be dismissed.

Casual Employment Issue

29. It may be convenient for Sea Swift, but the notion of “casual” employment is utterly unsuitable to the *seagoing industry* as defined in the *Seagoing Industry Award*. True *casual* employment was never a feature of the seagoing industry.
30. The history of the making of the Seagoing Award was as follows:
- a. Its area of operation was originally included in Stage 3 of the Award Modernisation process as part of the Maritime Industry. The main federal instrument at that time was the *Maritime Industry Seagoing Award 1999*⁴⁴. It

⁴⁰ Bruno at [32]. The enterprise award (which the AMOU understands to have been the Sea Swift Pty Ltd Enterprise Award – State 2005 AN140268, being a award of the Queensland Industrial Relations Commission made 27 June 2005) must have become NAPSA that then became an award-based transitional instrument (Item 2(5) of Schedule 3 of the *Fair Work (Transitional and Consequential Amendments) Act 2009*). It would have continued to cover and apply to Sea Swift and its employees (Item 3(5) of Schedule 3 of the *Fair Work (Transitional and Consequential Amendments) Act 2009*). As an enterprise award-based instrument (Item 2(2) of Schedule 6 of the *Fair Work (Transitional and Consequential Amendments) Act 2009*)

⁴¹ *ibid* cl 4(3)

⁴² Item 9(4), Schedule of the *Fair Work (Transitional and Consequential Amendments) Act 2009*

⁴³ *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189 at [24], extracted above

⁴⁴ Ben Cooper, BC2

included a “casual/relief” employee type for those “specifically engaged as such”⁴⁵. A “casual/relief” employee was still nonetheless entitled to the aggregate salaries⁴⁶ (noting the nature of Sea Swift’s operations, an additional allowance was paid where an employee was required to perform manual work involving handling cargo in port⁴⁷), the leave benefits that were peculiar to this award⁴⁸, and benefits on termination where such an employee was terminated (other than through summary dismissal) “at anytime prior to the expiration of a period of fifteen months continuous service”⁴⁹.

- b. Exposure draft of the Seagoing Industry Award was promulgated by the Commission on 22 May 2009 ((2009) 182 IR 413; [2009] AIRCFB 450; at paragraphs [112] – [119], noting at that time the exposure draft was said to reflect “substantial agreement between the unions (the Maritime Union of Australia (MUA), the Australian Institute of Marine and Power Engineers (AIMPE) and the Australian Maritime Officers Union (AMOU)) and employers represented by the Australian Mines and Metals Association (AMMA) and the Australian Ship Owners’ Association (ASOA)” and “the current Maritime Industry Seagoing Award 1999 with the necessary amendments and inclusions reflecting standard modern award provisions”). It should also be noted that the exposure draft did not include part-time provisions (as sought by some of the employer interests) because the existing award did not provide for it and it “is not a current employment practice in this industry” (at [114]). It should also be noted that the exposure draft took account of the specific needs of the industry (here referring to annualised salaries at [117], our emphasis): “Annualised salaries comprehending a range of components and the lengthy periods of leave recognise the nature of an industry where seagoing employees are required to remain on a vessel even when they are not physically working. It is a unique working environment and these award provisions reflect that fact”.
- c. An amendment was made to the Minister’s award modernisation request on 17 August 2009, resulting in consideration of the exposure draft of the *Seagoing Industry Award* being moved for consideration to Stage 4 of the award modernisation process (see (2009) 186 IR 14; [2009] AIRCFB 765 and (2009) 187 IR 192; [2009] AIRCFB 826 at [162]);
- d. A further exposure draft of the Seagoing Industry Award was published with the exposure drafts for Stage 4 of the award modernisation process on 25 September 2009 (see (2009) 188 IR 23; [2009] AIRCFB 865 at [152] – [163]). It referred to a “relief” employment type. It does not appear any submissions were advanced that suggested the ‘casual’ reference ought be maintained; and

⁴⁵ BC2, cl 10.3

⁴⁶ BC2, cl 13.1

⁴⁷ cl 19.1, reflecting the MUA submission that the rates for integrated ratings would in fact be higher for Sea Swift employees

⁴⁸ BC2, cl 33

⁴⁹ BC 2, cl 11.1.2

- e. The final form of the Seagoing Industry Award 2010 was made by decision published 4 December 2009 ((2009) 190 IR 370; [2009] AIRCFB 945, at [159] – [160]). Insofar as it applied to domestic vessels it was “*unchanged from the exposure draft*” (at [165]).
31. In the 2012 Transitional Review for the Seagoing Industry Award, specific applications were made to vary⁵⁰ but no party sought to revisit the coverage provisions in the three instruments on the basis that there was an anomaly arising from the Award modernisation process, or that it was necessary to include a small ships schedule⁵¹ for the Seagoing Industry Award to meet the modern awards objective, or that it was necessary to include a “casual” classification in that award.
32. Its substantive contention is that it has a number of casuals in its current employ, apparently in disregard of the *Seagoing Industry Award* (noting the enterprise award-based transitional instrument that covered it up until 31 December 2013 was terminated by operation of law long ago). Sea Swift is only in this position because, for reasons best known to itself, it:
- a. actively opposed becoming a party to the pre-modernisation award of the Australian Industrial Relations Commission which it now seeks to embrace as a classification in the *Seagoing Industry Award* (the Self Propelled Barges Award) in favour of continued coverage under a State award; and
- b. neglected to engage in the enterprise instrument modernisation process that would have enabled it to pursue a modern enterprise award to replace the old State award upon the enactment of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (at best it appears the evidence of Mr Bruno suggests it was ignorant of this process).
33. Sea Swift’s contentions in this respect are all based on *its* particular needs (again, characterized by it as unique). There is no evidence demonstrating a ‘casual’ employment type is *necessary* for the Seagoing Industry Award to meet the needs of the seagoing industry, the modern awards objective, or indeed how it would be consistent with the usual employment patterns in this industry to have a three-hour minimum engagement as proposed. It has provided no work value evidence for the classification of Master (or any other classification) to justify its inclusion.
34. It should be noted that the *Self-propelled Barge and Small Ships Industry Award 2001 AP810149* provided the “*casual/relief*” employment type⁵², with leave benefits⁵³, and specific benefits upon termination⁵⁴.

⁵⁰ each resulting in a decision of VP Watson ([2013] FWC 5414, dealing with an application to vary the salary rates for Part B ships; [2013] FWC 4033, dealing with an application to vary the preamble to Part B; [2013] FWC 279 being a consent variation to update certain matters associated with changes to Marine Orders Part 28; [2012] FWA 10657 relating to new classifications; [2012] FWA 9092 again relating to Part B; , or ultimately by a Full Bench on appeal (see *AMOU v CSL Australia Pty Ltd* [2013] FWCFB 8338)

⁵¹ indeed the variation largely proceeded by agreement: see [2012] FWA 8271

⁵² BC1, cl 10.3.1

35. The application for a 'casual' classification does not appear to be supported by any other party and should be dismissed.

New Classification Scale for Small Ships

36. Again, the Sea Swift application seeks to fundamentally vary the classification structures in the Seagoing Industry Award to meet its particular needs, without any apparent need being reflected in the industry more generally (adopting without repeating the history of award modernisation and the 2012 Transitional Review above). The *Self-propelled Barge and Small Ships Industry Award* was drawn to the attention of the Full Bench⁵⁵, but was not reflected in the draft instrument proposed by the MUA and AIMPE because it only applied to one employer. No party in the Award modernisation process, notably including the Perkins Shipping Group and the AIMPE (which was self evidently aware of the small ships award), appears to have suggested it was necessary to include a schedule to deal with small ships and self-propelled barges. No party suggested it was necessary in the 2012 Transitional Review (notably again including AIMPE).
37. Again, if Sea Swift's operations were so unique as to justify industrial regulation outside that provided for by the substantive industry awards, it could have sought its own enterprise modern award in the enterprise award modernisation process. It did not.
38. There is no work value evidence particular to the classification of Master for the vessels of the kind proposed to be covered by the application that enables the Full Bench to conclude that it would be justified in reducing the minimum pay rates for Masters on such vessels below that currently provided for by the Seagoing Industry Award.
39. Moreover, neither Sea Swift nor the AIMPE have provided work value evidence that justifies such gross delineations in pay rates below and above 5000 tonnes (or in the case of AIMPE 6000 tonnes), or why that demarcation has been adopted, noting both reflect a substantial departure from the 500 dead weight tonnes demarcation point in the *Self-propelled Barge and Small Ships Industry Award 2001*.
40. There is no evidence that demonstrates it is necessary to include the foreshadowed classification scale (either as framed by Sea Swift or the AIMPE) to meet the modern awards objective (evidence of a single employer's operations does not reflect a need to vary an industry instrument). The application by Sea Swift should be dismissed

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14 June 2016
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⁵³ BC1, cl 30, albeit not parental leave benefits: cl 31

⁵⁴ BC1 cl 12.1.2

⁵⁵ BC5 at [6]

AMOU 1

Award Modernisation


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[Notices of listing](#)
[Statements & decisions](#)
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[Correspondence](#)
[Parties' draft awards](#)
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Port and harbour services — All documents

Note: For current versions of modern awards you will need to go to the [Modern awards](#) website.

Organisation	Document	Date of document	Date Uploaded
	Modern award—Stevedoring Industry Award 2010 - incorporating residual variations (PDF version)	16 March 2010	17 March 2010
	Modern award—Stevedoring Industry Award 2010 - incorporating residual variations (Word version)	16 March 2010	17 March 2010
	Modern award—Port Authorities Award 2010 - incorporating residual variations (PDF version)	16 March 2010	17 March 2010
	Modern award—Port Authorities Award 2010 - incorporating residual variations (Word version)	16 March 2010	17 March 2010
	Modern award—Stevedoring Industry Award 2010 - Order re residual variations	16 March 2010	17 March 2010
	Modern award—Marine Tourism and Charter Vessels Award 2010 - Order re residual variations	16 March 2010	17 March 2010
	Modern award—Port Authorities Award 2010 - Order re residual variations	16 March 2010	17 March 2010
	Modern award—Ports, Harbours and Enclosed Water Vessels Award 2010 - incorporating residual variations (PDF version)	12 March 2010	16 March 2010
	Modern award—Ports, Harbours and Enclosed Water Vessels Award 2010 - incorporating residual variations (Word version)	12 March 2010	16 March 2010
	Modern award—Marine Towing Award 2010 - incorporating residual variations (PDF version)	12 March 2010	16 March 2010
	Modern award—Marine Towing Award 2010 - incorporating residual variations (Word version)	12 March 2010	16 March 2010
	Modern award—Coal Export Terminals Award 2010 - incorporating residual variations (PDF version)	12 March 2010	16 March 2010
	Modern award—Coal Export Terminals Award 2010 - incorporating residual variations (Word version)	12 March 2010	16 March 2010
	Modern award—Coal Export Terminals Award 2010 - Order re residual variations	12 March 2010	12 March 2010
	Modern award—Ports, Harbours and Enclosed Water Vessels Award 2010 - Order re residual variations	12 March 2010	12 March 2010
	Modern award—Marine Towing Award 2010 - Order re residual variations	12 March 2010	12 March 2010
CFMEU	Submissions—regarding residual variations	19 February 2010	19 February 2010

	Exposure draft—Draft residual variation - Ports, Harbours and Enclosed Water Vessels Award 2010 (PDF version)	9 February 2010	9 February 2010
Ai Group	Submissions—regarding residual variations	5 February 2010	8 February 2010
	Exposure draft—Draft residual variation - Coal Export Terminals Award 2010 (PDF version)	18 January 2010	18 January 2010
	Exposure draft—Draft residual variation - Port Authorities Award 2010 (PDF version)	18 January 2010	18 January 2010
	Exposure draft—Draft residual variation - Stevedoring Industry Award 2010 (PDF version)	18 January 2010	18 January 2010
	Exposure draft—Draft residual variation - Marine Towage Award 2010 (PDF version)	18 January 2010	18 January 2010
	Modern award—Stevedoring Industry Award 2010 - incorporating order, 16 Dec 09 (PDF version)	16 December 2009	17 December 2009
	Modern award—Stevedoring Industry Award 2010 - incorporating order, 16 Dec 09 (Word version)	16 December 2009	17 December 2009
	Modern award—Stevedoring Industry Award 2010 - Order re transitional provisions	16 December 2009	17 December 2009
	Modern award—Coal Export Terminals Award 2010 - incorporating order, 16 Dec 09 (PDF version)	16 December 2009	17 December 2009
	Modern award—Coal Export Terminals Award 2010 - incorporating order, 16 Dec 09 (Word version)	16 December 2009	17 December 2009
	Modern award—Coal Export Terminals Award 2010 - Order re transitional provisions	16 December 2009	17 December 2009
	Modern award—Port Authorities Award 2010 - incorporating order 15 Dec 2009 (PDF version)	15 December 2009	16 December 2009
	Modern award—Port Authorities Award 2010 - incorporating order 15 Dec 2009 (Word version)	15 December 2009	16 December 2009
	Modern award—Ports, Harbours and Enclosed Water Vessels Award 2010 - incorporating order, 15 December 09 (PDF version)	15 December 2009	16 December 2009
	Modern award—Ports, Harbours and Enclosed Water Vessels Award 2010 - incorporating order, 15 December 09 (Word version)	15 December 2009	16 December 2009
	Modern award—Marine Towage Award 2010 - incorporating order, 15 December 09 (PDF version)	15 December 2009	16 December 2009
	Modern award—Marine Towage Award 2010 - incorporating order, 15 December 09 (Word version)	15 December 2009	16 December 2009
	Modern award—Port Authorities Award 2010 - Order re superannuation	15 December 2009	16 December 2009
	Modern award—Marine Towage Award 2010 - Order re superannuation	15 December 2009	16 December 2009
	Modern award—Ports, Harbours and Enclosed Water Vessels Award 2010 - Order re superannuation	15 December 2009	16 December 2009
	Statements & decisions—Decision -	3 December 2009	3 December 2009

	Stage 3 transitional provisions		
CFMEU Mining & Energy	Submissions—further submission regarding labour hire	1 December 2009	1 December 2009
Ai Group and the RCSA	Submissions—further submission regarding labour hire	30 November 2009	1 December 2009
Group Training Australia	Submissions—regarding labour hire	30 November 2009	1 December 2009
CFMEU Construction & General Division	Submissions—regarding labour hire	30 November 2009	30 November 2009
CEPU	Submissions—regarding labour hire	30 November 2009	30 November 2009
CFMEU Mining & Energy	Submissions—regarding labour hire	30 November 2009	30 November 2009
Recruitment and Consulting Services Association and Recruitment Super	Submissions—regarding labour hire	25 November 2009	26 November 2009
Ai Group and the RCSA	Submissions—regarding labour hire	25 November 2009	25 November 2009
Coal terminals group	Submissions—regarding labour hire	25 November 2009	25 November 2009
CFMEU - Mining & Energy Division	Submissions—regarding labour hire	25 November 2009	25 November 2009
	Statements & decisions—Statement regarding labour hire services	17 November 2009	19 November 2009
Ai Group	Submissions—Transitional provisions - Further submission all stage 3 industries	6 November 2009	9 November 2009
Business SA	Submissions—Transitional provisions - All stage 3 industries	23 October 2009	23 October 2009
Ai Group	Submissions—Transitional provisions - All stage 3 industries	23 October 2009	23 October 2009
Coal Terminals Group	Submissions—Transitional provisions - Coal Export Terminals Award	23 October 2009	23 October 2009
CFMEU - Mining & Energy Division	Submissions—Transitional provisions - Multiple industries	23 October 2009	23 October 2009
AFEI	Submissions—Transitional Provisions - Port and Harbours Award	23 October 2009	23 October 2009
Professor Andrew Stewart	Submissions—Transitional provisions	12 October 2009	12 October 2009
	Statements & decisions—Statement regarding transitional provisions	22 September 2009	22 September 2009
	Statements & decisions—Statement	10 September 2009	10 September 2009
	Statements & decisions—Decision regarding Stage 3 modern awards	4 September 2009	4 September 2009
	Modern award—Coal Export Terminals Award 2010 (PDF version)	4 September 2009	4 September 2009
	Modern award—Coal Export Terminals Award 2010 (Word version)	4 September 2009	4 September 2009
	Modern award—Marine Towing Award 2010 (PDF version)	4 September 2009	4 September 2009
	Modern award—Marine Towing Award 2010 (Word version)	4 September 2009	4 September 2009
	Modern award—Port Authorities Award 2010 (PDF version)	4 September 2009	4 September 2009
	Modern award—Port Authorities Award 2010 (Word version)	4 September 2009	4 September 2009
	Modern award—Ports, Harbours and Enclosed Water Vessels Award 2010 (PDF version)	4 September 2009	4 September 2009
	Modern award—Ports, Harbours and Enclosed Water Vessels Award 2010 (Word version)	4 September 2009	4 September 2009

	Modern award—Stevedoring Industry Award 2010 (PDF version)	4 September 2009	4 September 2009
	Modern award—Stevedoring Industry Award 2010 (Word version)	4 September 2009	4 September 2009
	Notices of listing—4 September 2009	4 September 2009	4 September 2009
Chamber of Commerce & Industry WA	Submissions—further submission	20 August 2009	25 August 2009
ASU	Submissions—further submission	14 July 2009	14 July 2009
AWU	Submissions—AWU	7 July 2009	7 July 2009
	Transcripts—3 July 2009 - Sydney	3 July 2009	3 July 2009
	Transcripts—2 July 2009 - Sydney	2 July 2009	2 July 2009
	Transcripts—1 July 2009 - Sydney	1 July 2009	1 July 2009
CFMEU	Submissions—Wiggins Island Coal terminal article	30 June 2009	1 July 2009
CFMEU	Submissions—Export Coal Terminals - Existing Super funds	30 June 2009	1 July 2009
	Transcripts—30 June 2009 - Sydney	30 June 2009	30 June 2009
	Transcripts—29 June 2009 - Sydney	29 June 2009	29 June 2009
	Statements & decisions—Statement regarding variations to modern awards	26 June 2009	29 June 2009
	Transcripts—26 June 2009 - Melbourne	26 June 2009	26 June 2009
	Transcripts—25 June 2009 - Melbourne	25 June 2009	25 June 2009
	Transcripts—24 June 2009 - Melbourne	24 June 2009	24 June 2009
	Transcripts—23 June 2009 - Melbourne	23 June 2009	23 June 2009
	Transcripts—22 June 2009 - Melbourne	22 June 2009	22 June 2009
CFMEU - Mining & Energy Division	Submissions—regarding Exposure Draft	19 June 2009	19 June 2009
AMWU	Submissions—regarding Coal Export Terminals Exposure Draft	19 June 2009	19 June 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—regarding Exposure Drafts	16 June 2009	16 June 2009
Ports Australia Limited	Submissions—regarding Exposure Drafts	16 June 2009	16 June 2009
Statewide Superannuation, Westscheme and Tasplan	Submissions—regarding Exposure Drafts	12 June 2009	15 June 2009
Ai Group	Submissions—regarding Exposure Drafts	12 June 2009	15 June 2009
Patrick Stevedores Holdings Pty Ltd	Submissions—regarding Stevedoring Exposure Draft	12 June 2009	12 June 2009
AFEI	Submissions—regarding Ports and Harbours Exposure Draft	12 June 2009	12 June 2009
Business SA	Submissions—general submission regarding Exposure Drafts	12 June 2009	12 June 2009
CFMEU - Construction & General Division	Submissions—general submission regarding Exposure Drafts	12 June 2009	12 June 2009
GESB	Submissions—regarding Exposure Drafts - Superannuation	12 June 2009	12 June 2009
BT Financial Group	Submissions—regarding Exposure Drafts - Superannuation	10 June 2009	12 June 2009

The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—regarding Port Authorities Exposure Draft	12 June 2009	12 June 2009
CEPU	Submissions—regarding Exposure Drafts	12 June 2009	12 June 2009
APESMA	Submissions—regarding Port Authorities Exposure Draft	12 June 2009	12 June 2009
DP World and P&O Automotive	Submissions—regarding Stevedoring Exposure Draft	12 June 2009	12 June 2009
ASU	Submissions—regarding Exposure Drafts	12 June 2009	12 June 2009
Coal Terminals Group	Submissions—regarding Coal Export Terminals Exposure Draft	12 June 2009	12 June 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—regarding Ports and Harbours Exposure Draft	12 June 2009	12 June 2009
VicSuper Pty Ltd	Submissions—regarding Exposure Drafts - Superannuation	11 June 2009	12 June 2009
Sunsuper Pty Ltd	Submissions—regarding Exposure Drafts - Superannuation	11 June 2009	12 June 2009
Maritime Towing Employers Group	Submissions—regarding Marine Towing Exposure Draft	12 June 2009	12 June 2009
Gladstone Ports Corporation	Submissions—regarding Port Authorities Exposure Draft	12 June 2009	12 June 2009
The Maritime Union of Australia	Submissions—regarding Marine Towing Exposure Draft	12 June 2009	12 June 2009
The Maritime Union of Australia	Submissions—regarding Stevedoring Exposure Draft	12 June 2009	12 June 2009
CFMEU - Mining & Energy Division	Correspondence—regarding Exposure Drafts	10 June 2009	10 June 2009
Commissioner for Public Employment Northern Territory	Submissions—regarding Exposure Draft	9 June 2009	9 June 2009
	Notices of listing—Public consultations 22 June - 3 July 2009	5 June 2009	5 June 2009
Westscheme Superannuation Fund	Submissions—regarding Exposure Draft - Superannuation	4 June 2009	5 June 2009
Chamber of Commerce & Industry WA	Submissions—regarding Transitional provisions	29 May 2009	1 June 2009
	Statements & decisions—Statement regarding Stage 3 exposure drafts	22 May 2009	22 May 2009
	Exposure draft—Coal Export Terminals Award 2010 (PDF version)	22 May 2009	22 May 2009
	Exposure draft—Coal Export Terminals Award 2010 (Word version)	22 May 2009	22 May 2009
	Exposure draft—Marine Towing Award 2010 (PDF version)	22 May 2009	22 May 2009
	Exposure draft—Marine Towing Award 2010 (Word version)	22 May 2009	22 May 2009
	Exposure draft—Port Authorities Award 2010 (PDF version)	22 May 2009	22 May 2009
	Exposure draft—Port Authorities Award 2010 (Word version)	22 May 2009	22 May 2009
	Exposure draft—Ports, Harbours and Enclosed Water Vessels Award 2010 (PDF version)	22 May 2009	22 May 2009
	Exposure draft—Ports, Harbours and	22 May 2009	22 May 2009

	Enclosed Water Vessels Award 2010 (Word version)		
	Exposure draft—Stevedoring Industry Award 2010 (PDF version)	22 May 2009	22 May 2009
	Exposure draft—Stevedoring Industry Award 2010 (Word version)	22 May 2009	22 May 2009
	Notices of listing—22 May 2009	21 May 2009	21 May 2009
Westscheme Superannuation Fund	Submissions—regarding superannuation	19 May 2009	20 May 2009
Nationwide Superannuation Fund	Submissions—NSF - regarding superannuation	12 May 2009	13 May 2009
AFEI	Submissions—AEFI	28 April 2009	29 April 2009
Ai Group	Submissions—further submission	28 April 2009	29 April 2009
Commercial Vessels Association	Submissions—CVA	28 April 2009	29 April 2009
Whitsunday Charter Boat Industry Association & Association of Marine Park Tourism Operators	Submissions—Further submission	27 April 2009	27 April 2009
Coal Terminals Group	Parties' draft awards—Coal Export Terminals Award 2010 - revised	24 April 2009	24 April 2009
Coal Terminals Group	Submissions—Further submission	24 April 2009	24 April 2009
DP World, P&O Automotive, Patrick Stevedores and Newcastle Stevedores	Submissions—further submission 2	24 April 2009	24 April 2009
Maritime Towing Employers Group	Parties' draft awards—Marine Towing Award 2010	22 April 2009	22 April 2009
Maritime Towing Employers Group	Submissions—MTEG - supplementary submission	22 April 2009	22 April 2009
DP World, P&O Automotive, Patrick Stevedores and Newcastle Stevedores	Parties' draft awards—Stevedoring Industry Award 2010	17 April 2009	21 April 2009
DP World, P&O Automotive, Patrick Stevedores and Newcastle Stevedores	Submissions—further submission	17 April 2009	20 April 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—further submission	17 April 2009	20 April 2009
ASU	Submissions—further submission	17 April 2009	17 April 2009
Gladstone Ports Corporation	Submissions—further submission	17 April 2009	17 April 2009
The Maritime Union of Australia	Parties' draft awards—Stevedoring Industry Award 2010	17 April 2009	17 April 2009
The Maritime Union of Australia	Parties' draft awards—Marine Towing Award 2010	17 April 2009	17 April 2009
The Maritime Union of Australia	Submissions—in relation to marine towing	17 April 2009	17 April 2009
The Maritime Union of Australia	Submissions—in relation to stevedoring	17 April 2009	17 April 2009
Ports Australia Limited	Parties' draft awards—Ports Authorities Industry Award - amended	16 April 2009	17 April 2009
CFMEU - Mining & Energy Division	Submissions—CFMEU - Attachment 1 - Annual report	14 April 2009	17 April 2009
CFMEU - Mining & Energy Division	Submissions—CFMEU - further submission	14 April 2009	17 April 2009
AFEI	Parties' draft awards—Marine Tourism and Charter Vessels Award	9 April 2009	14 April 2009

	2010		
Commercial Vessel Association of NSW	Parties' draft awards—Marine Tourism and Charter Vessels Award	9 April 2009	9 April 2009
Commercial Vessel Association of NSW	Submissions—further submission	9 April 2009	9 April 2009
Whitsunday Charter Boat Industry Association & Association of Marine Park Tourism Operators	Parties' draft awards—Marine Tourism and Charter Vessels Award	8 April 2009	9 April 2009
Whitsunday Charter Boat Industry Association & Association of Marine Park Tourism Operators	Submissions—further submission	8 April 2009	9 April 2009
Pacific Marineline Institute Marine Alliance	Submissions—PMIMA	3 April 2009	7 April 2009
	Transcripts—27 March 2009 - Melbourne - amended	27 March 2009	7 April 2009
Russell Investments	Submissions—Russell Investments	2 April 2009	3 April 2009
Patrick Stevedores Holdings Pty Ltd	Submissions—Patrick Stevedores Holdings - additional submissions	27 March 2009	27 March 2009
Queensland Sugar Limited	Submissions—QSL - supplementary submission	27 March 2009	27 March 2009
Commercial Vessel Association of NSW	Submissions—CVANSW - further submission	26 March 2009	27 March 2009
Association of Marine Park Tourism Operators	Submissions—AMPTO	26 March 2009	27 March 2009
APESMA	Submissions—APESMA - further submission	26 March 2009	27 March 2009
Whitsunday Charter Boat Industry Association	Submissions—WCBIA	27 March 2009	27 March 2009
CEPU	Submissions—CEPU - Further submission	26 March 2009	26 March 2009
Ports Australia Limited	Parties' draft awards—Ports Australia Limited	26 March 2009	26 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—further submission	18 March 2009	18 March 2009
Port Phillip Sea Pilots Pty Ltd	Submissions—PPSP	13 March 2009	13 March 2009
Ports Australia Limited	Submissions—Ports Australia	12 March 2009	12 March 2009
Maritime Towing Employers Group	Parties' draft awards—Maritime Towing Award 2010	6 March 2009	11 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Parties' draft awards—Maritime Industry Port Authorities & Construction Award 2010	6 March 2009	11 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Parties' draft awards—Stevedoring Industry Award 2010	6 March 2009	11 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Parties' draft awards—Tug Industry Award 2010	6 March 2009	11 March 2009
Ai Group	Submissions—AiG	6 March 2009	10 March 2009
Sydney Ferries	Submissions—SF	6 March 2009	10 March 2009
AFEI	Submissions—AFEI	6 March 2009	10 March 2009
AWU and the Australian Workers' Union of	Submissions—AWU & AWUEQ	6 March 2009	6 March 2009

Employees, Queensland			
AFEI	Parties' draft awards—Tourism and Leisure Charter Vessels Award 2010	6 March 2009	6 March 2009
Patrick Stevedores Holdings Pty Ltd	Submissions—Patrick Stevedores Holdings	6 March 2009	6 March 2009
Local Government Association of NSW	Submissions—LGSA	6 March 2009	6 March 2009
Business SA	Submissions—Business SA	6 March 2009	6 March 2009
AMP	Submissions—AMP - regarding Superannuation	6 March 2009	6 March 2009
Gladstone Ports Corporation	Submissions—Gladstone Ports Corporation	6 March 2009	6 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Parties' draft awards—Port Harbour and Enclosed Water Vessels Award 2010	6 March 2009	6 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—MUA and AIMPE - regarding enclosed water vessels	6 March 2009	6 March 2009
Commercial Vessel Association of NSW	Submissions—CVA	6 March 2009	6 March 2009
APESMA	Submissions—APESMA	6 March 2009	6 March 2009
Maritime Towing Employers Group	Submissions—MTE	6 March 2009	6 March 2009
Queensland Sugar Limited	Parties' draft awards—Sugar Industry Award 2010	6 March 2009	6 March 2009
Queensland Sugar Limited	Submissions—QSL	6 March 2009	6 March 2009
AMWU	Submissions—AMWU	6 March 2009	6 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—MUA and AIMPE - regarding port authority award	6 March 2009	6 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—MUA and AIMPE - regarding stevedoring	6 March 2009	6 March 2009
The Maritime Union of Australia and the Australian Institute of Marine and Power Engineers	Submissions—MUA and AIMPE - regarding tug industry	6 March 2009	6 March 2009
CEPU	Submissions—CEPU	6 March 2009	6 March 2009
Coal Terminals Group	Submissions—CTG	6 March 2009	6 March 2009
DP World	Submissions—DPworld	6 March 2009	6 March 2009
P&O Automotive & General Stevedoring	Submissions—P&O	6 March 2009	6 March 2009
ASU	Submissions—ASU	6 March 2009	6 March 2009
CFMEU - Mining & Energy Division	Submissions—CFMEU Energy & Mining Division	6 March 2009	6 March 2009
Group Training Australia	Submissions—GTA - General issues	5 March 2009	5 March 2009
First State Super	Submissions—FSS - regarding Superannuation	5 March 2009	5 March 2009
Sunsuper Pty Ltd	Submissions—Sunsuper - regarding Superannuation	3 March 2009	3 March 2009
	Notices of listing—Melbourne - Public consultations	20 February 2009	20 February 2009

Statements & decisions—Statement regarding Stage 3 lists of industries, relevant awards and timetable	30 January 2009	30 January 2009
Notices of listing—30 January 2009	29 January 2009	29 January 2009

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AMOU 2

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6 March 2009

Our Ref:WGMc:NK:TM:901019

The Industrial Registrar
Australian Industrial Relations Commission
GPO Box 1994
MELBOURNE VIC 3000

By email: amod@air.gov.au

Dear Registrar,

**RE: PORT HABOUR AND ENCLOSED WATER VESSELS AWARD 2010
AM2008/49 and AM2008/41**

We are the lawyers for the Maritime Union of Australia and the Australian Institute of Marine and Power Engineers.

We enclose our submissions for the making of a modern award known as the "Port Harbour and Enclosed Water Vessels Award 2010".

We will be attending the public consultations on 19 and 27 March 2009.

Yours faithfully,

W.G. McNALLY JONES STAFF

BILL McNALLY

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Entitled to practice in New South Wales, Victoria, Queensland, South Australia, Western Australia, the Australian Capital Territory and any federal court in Australia.

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Award Modernisation

Port and Harbour Services

(AM2008/49)

Maritime

(AM2008/41)

SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA

AND

THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS

IN SUPPORT OF THE MAKING OF THE

PORT HARBOUR AND ENCLOSED WATER VESSELS AWARD 2010

Introduction

1. It is submitted that the Commission should make the Port Harbour and Enclosed Water Vessels Award 2010 in accordance with attachment "A" to these submissions. ("Modern Award")

2. **Coverage**

This Modern Award is expressed to cover employers in the Port, Harbour and Enclosed Water Vessels Industry and their employees. The industry is defined as "employers engaged in or in connection with vessels."

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3. The award replaces the following instruments:

AIRC Industry	Publication Title	Pub ID
Port and harbour services	Port Services Award 1998	AP792489
Maritime industry	Ketches & Schooners Award	AN150068
Maritime industry	Shipping Award	AN170095
Port and harbour services	Deckhands (Passenger Ferries, Launches and Barges) Award	AN160097
Port and harbour services	Masters, Mates and Engineers Passenger Ferries Award	AN160199
Port and harbour services	Marine Charter Vessels (State) Award	AN120330
Port and harbour services	Motor Boats and Small Tugs (State) Award	AN120350
Port and harbour services	Motor Ferries State Award	AN120351
Port and harbour services	Wire Drawn Ferries (State) Award	AN120650
Port and harbour services	Masters and Engineers' Award - Port of Brisbane 2003	AN140164
Port and harbour services	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under -	AN140165

	State (Excluding The Port of Brisbane) 2003	
Port and harbour services	Port Authorities Award - State 2003	AN140213
Public Transport Industry	Stradbroke Ferries Pty Ltd Enterprise Award 2005	AN140280
Tourism industry	Whitsunday Charter Boat Industry Interim Award - State 2005	AN140315
Maritime industry	Maritime Award - Brisbane River and Moreton Bay 2003	AN140163
Maritime industry	North Queensland Boating Operators Employees Award - State 2003	AN140190

4. We have not included in this modern award:
- a. Provisions contained in pre-reform enterprise awards (including NAPSAs).
 - b. Provisions contained in long service leave awards;
 - c. Provisions contained in Victorian minimum wage orders;
 - d. Provisions contained in superannuation awards.
 - e. In AM2008/49 we have sought a modern award known as "Dredging Industry Award 2010." The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:
 - i) Dredging Industry (AWU) Award 1998 – AP778702
 - ii) Marine Engineers (Non Propelled) Dredge Award 1998 – AP788027

iii) Maritime Industry Dredging Award 1998 – AP787991

f. In AM2008/49 we have sought a modern award known as “Tug Industry Award 2010.” The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Tug and Barge Industry (Interim) Award 2002 – AP824200

ii) Tug Boat Industry Award 1999 – AP799111

g. In AM2008/41 we have also sought a modern award known as “Seagoing Industry Award 2010” The provisions contained the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Maritime Industry Seagoing Award 1999 – AP788080

h. In AM2008/49 we have sought a modern award known as “Port Authorities and Port Construction Award 2010.” The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Maritime Union of Australia (Ship Services) Award 2002 AP816677

ii) New South Wales Port Corporations Award 1999 AP791641

iii) Ports of Victoria Consolidated Administration Award 1998 - AP792487

iv) Queensland Regional Port Authorities and Corporations Employees Interim Award 2000- AP794137

v) Regional Port Authority Officers' (Queensland) Award 1999 - AP794800

vi) Tasmanian Ports Corporations Award 2002 - AP819542

vii) Victorian Port and Harbour Services Consolidated Operational Award
1998 AP802100

i. In AM2008/49 we have sought a modern award known as “Stevedoring Industry Award 2010.” The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Stevedoring Australian Vocational Training System Award 2000 -
AP796383

ii) Stevedoring Industry Award 1999 - AP796113

j. In AM2008/49 we have sought a modern award known as “Port Authorities and Port Construction Award 20.” The provisions in the following NAPSAs have been incorporated into that award rather than this modern award

i) Port Stanvac Award AN160199

ii) Marine Stores Award AN160199

5. We have not included the Self-Propelled Barge and Small Ships Industry Award 2001 which is referred to in the Full Bench Statement dated 30 January 2009 for the Maritime Industry. It only applies to Perkins Shipping Group;

6. We have not included the Bulk Terminals Award - State 2003 - AN140048 which is referred to in the Full Bench Statement dated 30 January 2009 for the Port and Harbour Services Industry as it only applies to Queensland Sugar Limited;

Terms of the Modern award

7. The table below sets out the source of each of the terms of the Modern Award.

Clause	source
Clause 1 – Title -	New
Clause 2 – Commencement date	AIRC template

Clause 3 – Definitions and interpretation	<ol style="list-style-type: none"> 1. Definitions of Act, employee, employer, enterprise award and NES are from the AIRC template; 2. Definitions of Bunker Barge, Shipkeeper, Small Tug and Winch Driver are from clause 2 of the Motor Boats and Small Tugs(State) Award 3. Definitions of Ferry Engine Driver are from clause 2 of the Wire Drawn Ferries (State) Award. 4. Definitions of Non self-propelled bunker barge, and Self-propelled bunker barge are from clause 5 of the Port Services Award 1998 5. Definitions of Port and Vessel are from the Navigation Act 1912.
Clause 4-coverage of the award	New clause
Clause 5-access to the award and the NES	Model provision
Clause 6 – NES and this award	Model provision
Clause 7 – award flexibility	Model provision
Clause 8 – consultation	Model provision
Clause 9 – dispute resolution	Model provision
Clause 10 – types of employment	New clause with casual loading set at 25%.
Clause 11 – Employer and employee duties	New clause
Clause 12 – termination of employment	<ol style="list-style-type: none"> 1. Used the model clause. 2. Return to place of engagement added from: <ol style="list-style-type: none"> a. Master and Engineers' Award - Port of Brisbane 2003 b. masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane) 2003
Clause 13 – redundancy	Model provision
Clause 14 – minimum	From Part B of Motor Boats and Small Tugs (State) Award except

wages	for the classification of master which is from the Port Services Award
Clause 16 – Allowances	<ol style="list-style-type: none"> 1. Clause 16.1 is from clause 10.5 of Masters and Engineers' Award - Port of Brisbane 2003 2. Clause 16.2 is from clause 8.7.1 of Motor Boats and Small Tugs (State) Award 3. Clause 16.3 is from clause 14 of the Shipping Award 4. Clause 16.4 is from clause 11.4 of the Port Services Award 5. Clause 16.5 is from clause 15 of the Deckhands (Passenger Ferries, Launches and Barges) Award 6. Clause 16.6 is derived from clause 14 of Marine Charter Vessels (State) Award 7. Clause 16.7 is from clause 11.2 of Port Services Award 8. Clause 16.8 is from clause 4.1.1 of Part 5 of Port Services Award combined with clause 18.5 of Motor Boats and Small Tugs (State) Award 9. Clause 16.9 is from clause 9 of the Deckhands (Passenger Ferries, Launches and Barges) Award 10. Clause 16.10 is from clause 4(3) of the Deckhands (Passenger Ferries, Launches and Barges) Award 11. Clause 16.11 is from clause 4(4) of the Deckhands (Passenger Ferries, Launches and Barges) Award 12. Clause 16.12 is from clause 4(5) of the Deckhands (Passenger Ferries, Launches and Barges) Award 13. Clause 16.13 is from clause 34(a) of the Shipping Award 14. Clause 16.14 is from clause 15(1) of the Masters, Mates and Engineers Passenger Ferries Award 15. Clause 16.16 is from clause 8.2 of Part 2 of Port Services Award 16. Clause 16.16 is from clause 5.3.2 of Masters, Mates And Engineers' Award, Motor Vessels 2500 B.H.P./1866 kW.B.P. and under - State (Excluding the Port Of Brisbane) 2003 17. Clause 16.17 is from clause 9.2 of Wire Drawn Ferries Award 18. Clause 16.18 is from clause 13 of Motor Boats And Small Tugs (State) Award 19. Clause 16.19 is from clause 10.4 of North Queensland Boating Operators Employees Award - State 2003 20. Clause 16.20 is from clause 4.1 of Part 3 of Port Services Award 21. Clause 16.21 is from clause 48 of the Shipping Award 22. Clause 16.22 is from clause 4.6 of Part 3 of Port Services Award. 23. Clause 16.23 is from clause 4.7 of Part 3 of Port Services Award.

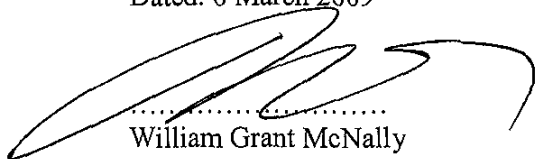
	<p>24. Clause 16.24 is from clause 4.8 of Part 3 of Port Services Award.</p> <p>25. Clause 16.25 is from clause 5.3 of North Queensland Boating Operators Employees Award - State 2003</p> <p>26. Clause 16.26 is from clause 8.1 of North Queensland Boating Operators Employees Award - State 2003</p>
Clause 16 – Mixed function	New
Clause 17 – Payment of wages	New
Clause 18 - Superannuation	Model clause
Clause 19 – ordinary hours of work and rostering	<p>NES supplemented by</p> <ol style="list-style-type: none"> 1. Clause 19.2 from clause 6.1 of Masters and Engineers' Award - Port of Brisbane 2003 – span on hours 2. Clause 19.4 is based on clause 6 of Deckhands (Passenger Ferries, Launches and Barges) Award – avoidance of physical exhaustion
Clause 20 - breaks	New clause
Clause 21 – Overtime and penalty rates	New Clause
Clause 22 - shiftwork	New Clause
Clause 23 – annual leave	<p>NES supplemented by</p> <ol style="list-style-type: none"> 1. Adding a loading of 17.5% except for shift workers (20%) from Motor Boats and Small Tugs (State) Award.
Clause 24 – Personal/carer's and compassionate leave	Cross references the relevant NES.
Clause 25 – Community Service leave	Cross references the relevant NES.
Clause 26 – public holidays	Cross references the relevant NES and inserted a rate of pay for work on public holidays.
Clause 27 – Accident pay	Model provision.

Conclusion

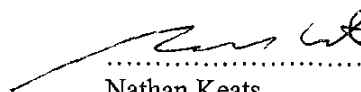
8. We submit that the Port Harbour and Enclosed Water Vessels Award 2010 should be made.

9. Bill McNally and Nathan Keats will attend the public consultations on 19 and 27 March 2009 to answer questions and make submissions in relation to draft awards proposed by other interested organisations.

Dated: 6 March 2009



.....
William Grant McNally
Solicitor for the Maritime Union of Australian



.....
Nathan Keats

Port Harbour and Enclosed Water Vessels Award 2010

Table of Contents

Part 1— Application and Operation	3
1. Title	3
2. Commencement date.....	3
3. Definitions and interpretation	3
4. Coverage	4
5. Access to the award	4
6. The National Employment Standards and this award.....	4
7. Award flexibility	5
Part 2— Consultation and Dispute Resolution	6
8. Consultation regarding major workplace change	6
9. Dispute resolution	7
Part 3— Types of Employment and Termination of Employment	7
10. Employment categories.....	7
11. Employer and employee duties	9
12. Termination of employment	9
13. Redundancy.....	9
Part 4— Minimum Wages and Related Matters.....	11
14. Minimum wages.....	11
15. Allowances.....	11
16. Mixed functions	17
17. Payment of wages	17
18. Superannuation	17
Part 5— Hours of Work and Related Matters	19
19. Ordinary hours of work and rostering.....	19
20. Breaks	19
21. Overtime and penalty rates	20
22. Shiftwork.....	21
Part 6— Leave and Public Holidays.....	22
23. Annual leave	22
24. Personal/carer's leave and compassionate leave.....	22
25. Community service leave.....	22

Parties' Draft (MUA, AIMPE): Port Harbour and Enclosed Water Vessels Award 2010

26.	Public holidays	22
27.	Accident Pay.....	22
Schedule A— Classifications		24

Part 1—Application and Operation

1. Title

This award is the *Port Harbour and Enclosed Water Vessels Award 2010*

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Workplace Relations Act 1996* (Cth).

Bunker Barge is a self propelled or non self propelled vessel which is normally used in the carriage of bulk liquid cargoes for the purpose of bunkering.

Day means the 24 hours from midnight to midnight

employee has the meaning in the Act

employer has the meaning in the Act

enterprise award has the meaning in the Act

Ferry Engine Driver shall mean the employee who operates the ferry in a single crew operation and shall be the driver in a more than one crew operation.

NES means National Employment Standards

Non self-propelled bunker barge is a vessel which has no propulsion machinery and which is normally used in the carriage of bulk liquid cargoes for the purpose of bunkering.

Port includes a place and a harbour

Self-propelled bunker barge means a vessel propelled by its own power and normally used in the carriage of bulk liquid cargoes for the purpose of bunkering.

Ship means any vessel intended or used for navigating the water.

Shipkeeper shall mean any person engaged in mooring, pumping or looking after any Lighter, Hopper, Winch Punt or Tug.

Small Tug means any vessel in the small tug industry being used exclusively for towing hoppers, barges, punts, logs or any floating material or vessel.

Standard rate means the minimum wage for a General Purpose Hand in clause 14.

Vessel means any kind of vessel used in navigation other than air navigation and includes a barge, lighter or like vessel.

Winch Driver is any person engaged in driving a winch on a Winch Punt or Crane Lighter.

- 3.2 Where this award refers to a condition of employment provided for in the NES the reference is to the condition as defined in the NES.

4. Coverage

- 4.1 This industry award covers employers in the Port, Harbour and Enclosed Waters Vessels Industry and their employees in the classifications within Schedule A to the exclusion of any other modern award. The award does not cover employers in the following industries:

- (a) Offshore Oil & Gas;
- (b) Seagoing;
- (c) Port Authority and Port Construction;
- (d) Dredging;
- (e) Stevedoring; and
- (f) Tug;

- 4.2 The award does not cover an employee excluded from award coverage by the Act.
- 4.3 The award does not cover an employer bound by an enterprise award with respect to any employee who is covered by the enterprise award.
- 4.4 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.
- 4.5 For the purpose of clause 4.1, **Port, Harbour and Enclosed Waters Vessels Industry** means employers engaged in or in connection with vessels.

5. Access to the award

- 5.1 The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible

6. The National Employment Standards and this award

The NES and this award combine to form the minimum conditions of employment for employees to whom this award applies.

7. Award flexibility

7.1 An employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms of the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee must:

- (a) Be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) Not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.

7.4 For the purposes of clause 7.3(b) the agreement will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:

- (a) The agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this award and any applicable agreement made under the Act, as those instruments applied as at the date the agreement commences to operate; and
- (b) The agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.

7.5 The Agreement between the employer and the individual employee must also:

- (a) Be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) State each term of this award that the employer and the individual employee have agreed to vary;
- (c) Detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) Detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
- (e) State the date the agreement commences to operate.

- 7.6 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.7 The agreement may be terminated:
- (a) By the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) At any time, by written agreement between the employer and the individual employee.
- 7.8 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employers to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **Significant effect** include termination of employment, major changes in composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where this award makes provisions for alteration of any of the matters referred to herein an alteration is deemed to not have significant effect.

8.2 Employers to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1 of this award and the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the change.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1 of this award.

- 8.3 For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that

no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

- 9.1 In the event of a dispute in relation to a matter arising under this award, or the NES, in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2 If a dispute in relation to a matter arising under this award is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3 The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4 Where the matter in dispute remains unresolved the Commission may exercise any method of dispute resolution permitted by the Act it considers appropriate to ensure the settlement of the dispute.
- 9.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purpose of this clause.
- 9.6 While the dispute resolution procedure is being conducted work must continue normally unless an employee has a reasonable concern about an imminent risk to his or her health or safety. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform other available work, whether at the same or another workplace that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Employment categories

10.1 General

- (a) Employees under this award will be employed in one of the following categories:
- (i) Full Time Employees; or
 - (ii) Part-Time Employees; or
 - (iii) Casual Employees; or
- (b) At the time of engagement an Employer will inform each Employee of the terms of their engagement and in particular whether they are to be Full-Time, Part-Time or Casual Employees.

10.2 Full-time employment

- (a) An employer may employ an employee on a full-time basis of 38 hours per week

10.3 Casual Employment

- (a) A Casual Employee is an Employee engaged as such.
- (b) A Casual Employee for working within the ordinary hours of work (pursuant to Clause 20) shall be paid per hour for the work performed plus 25% loading which incorporates the casual Employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shift allowances.
- (c) Casual Employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
- (d) On each occasion a Casual Employee is required to attend work he or she is entitled to a minimum payment for three hours work.

10.4 Part-Time Employees

- (a) An Employer may employ Part-Time Employees in any classification in this award.
- (b) A Part-Time Employee is an Employee who:
 - (i) has reasonably predictable hours of work; and
 - (ii) receives, on a pro-rata basis, equivalent pay and conditions to those of full-time Employees who do the same kind of work.
- (c) At the time of engagement the Employer and the part-time Employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the Employee will work and the actual starting and finishing times each day.
- (d) Any agreed variation to the regular pattern of work will be recorded in writing.
- (e) An Employee is required to roster a regular part-time Employee for a minimum of two consecutive hours on any shift.
- (f) An Employee who does not meet the definition of a regular part-time Employee and who is not a full-time Employee will be paid as a casual Employee.
- (g) All time worked in excess of the hours as mutually arranged, excluding any Additional Hours, will be overtime.
- (h) A regular part-time Employee employed under the provisions of this clause must be paid for ordinary hours worked on a pro rata basis of the full-time Employee at the full-time Employee rate.
- (i) All leave accruals and separation entitlements of part-time Employees shall be calculated and paid on a pro-rata basis of the full-time Employee at the full-time rate of pay.
- (j) Where an employee and their employer agree in writing, part-time employment may be converted to full-time, and vice-versa. If such an employee transfers from

full-time to part-time (or vice-versa), all accrued award and legislative entitlements will be maintained. Following transfer to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

11. Employer and employee duties

- 11.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
- 11.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that such employee has been properly trained in the use of such tools and equipment.
- 11.3 Any direction issued by an employer pursuant to 11.1 and 11.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

12. Termination of employment

12.1 Termination of employment

12.2 Notice of termination is provided for in the NES.

12.3 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer has the right to withhold pay to a maximum amount equal to the amount the employee would have received under the terms of the NES.

12.4 Job search entitlement

Where an employer has given notice of termination to an employee, an employee will be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off will be taken at times that are convenient to the employee after consultation with the employer.

12.5 Return to place of engagement

If the employment of any employee is terminated by the employer elsewhere than at the place of engagement, for any reason other than misconduct, the employer shall be responsible for conveying the employee to the place of engagement.

13. Redundancy

13.1 Redundancy pay is provided for in the NES.

13.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

13.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

13.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment

13.5 Transitional provisions

- (a) Subject to clause 13.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:
 - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) This clause ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

14. Minimum wages

14.1 The minimum rates for each classification shall be:

Classification	\$ per week
Master	751.30
Mate	714.40
Engineer	714.40
General Purpose Hand/Deckhand/greaser/Passenger attendant/turnstile attendant/host/hostess/fireman/trimmer/linesman/cook/sailor/able seaman/leading hand	674.70
Shipkeeper	616.30
Crane Driver (under 20 tonnes)	627.70
Crane Driver (over 20 tonnes)	693.80

15. Allowances

15.1 Bedding and other utensils

- (a) When vessels are away during the night, the employer shall supply a mattress, 2 blankets, 2 sheets, one pillow, one pillow slip, towel, soap eating utensils, washing cloths and drying towels. Laundering to be the responsibility of the employer.
- (b) On termination of employment an employee will be required to return to the employer all articles on issue to them.

15.2 Charge hands

Charge Hands shall be paid an allowance of 3.26% of the SR per week. Charge hands not directly supervised by a foreman in the allocation of duties to employees shall be paid an allowance of 4.85% of the SR per week.

15.3 Distant Work

- (a) A relieving employee other than a casual employee who is required to work at a place away from his/her normal place of work shall be paid all additional fares involved and additional travelling time involved at the rate of single time; provided that no employee shall be paid more than his/her ordinary day's wages for any time not exceeding 24 hours spent in travelling.

- (b) A relieving employee including a casual employee who is temporarily transferred to a locality to carry out relieving duties, where it is necessary to sleep away from his/her home, shall be provided with reasonable board and lodging or paid an allowance of 56.23% of the SR per week of seven days. In the case of broken parts of a week, the allowance shall be all living expenses actually and reasonably incurred but not exceeding the rate of 8.00% of the SR per day.

15.4 Dual capacity allowance

An employee who is a holder of a Certificate of Competency as a Marine Motor Engineer shall be paid an allowance of \$3.88 for each day or part of a day during which he/she is required to use such a certificate. The allowance prescribed by this subclause shall, when paid, be deemed to be part of the ordinary rate of wages for the purpose of calculating overtime, annual leave, sick leave and long service leave.

15.5 Protective clothing

On request an employee shall be supplied by the employer with an oilskin, "south wester", sea boots, overalls, gloves, hard hats, sun-screen lotion, safety glasses, safety shoes, sunglasses and ear protection devices for his own use when it is reasonably necessary to wear such protective clothing.

15.6 Uniforms

Where employees are required to wear uniforms, these shall be provided by the employer at no cost to the employee or, in lieu thereof, the employer will pay to the employee the sum 2.01% of the SR. Such uniform shall be laundered by the employer.

15.7 Compensation for loss of personal effects

If in the course of employment an employee should sustain damage to or loss of their personal effects by fire, explosion, foundering, shipwreck, collision, stranding or accident and where such damage was not caused by the employee's own willful neglect or fault or where such articles are lost through breaking or entering whilst securely stored at the employer's direction in a room or building on the employer's premises, vessel or work shop, the employer shall compensate the employee to the extent of the damage or loss to a maximum of 210.30% of the SR.

15.8 Dirty Work

- (a) An employee called upon to perform work which is more dirty or offensive than would normally apply shall be paid an additional .07% of the SR per hour for the time spend on such work.
- (b) Provided that, in lieu of the above allowance, for all work an employee is required to perform alongside vessels in discharging alumina, petroleum, coke, sulphur, anhydrous ammonia and all phosphates, the employee shall be paid an allowances of 0.18% of the SR per hour. Such employee will be eligible for this payment from the time the barge ties up to the vessel until the time it returns to its berth at the completion of the bunker.

15.9 Wet work

- (a) Any employee working in water or "wet places" shall be paid an extra allowance of .03% of the SR per hour.
- (b) "Wet places" shall mean places where, in the performance of the work, the splashing of water or mud saturates the employee's clothing, or where protection is not provided to prevent splashing or drippings sufficient to saturate his clothing, and shall include wet material or wet ground in which it is impracticable for the employee wearing ordinary working boots to work without getting wet feet. Provided this clause shall not apply to employees working on natural surface made wet by rain.

15.10 Unloading/loading garbage allowance

An employee called upon to work at loading or unloading garbage and/or ashes or other like material shall be paid an allowances of 0.07% of the SR per hour.

15.11 Slipway etc allowance

A junior employee called to work on slipways, cleaning, scraping, painting or overhauling launches, barges, punts or any other floating plant shall be paid an allowance of 0.08% of the SR per hour.

15.12 Bilge allowance

An employee required to work in the bilges shall be paid an allowance of 0.11% of the SR per hour.

15.13 Chipping Hammers

Employees using electric or pneumatic chipping hammers, wire brushing machine and sandblasting machine shall be paid at the rate of 0.01% of the SR per hour in addition to any other ordinary or overtime rate for the time so occupied. Where a chipping hammer is being used in a confined space, suitable ventilation shall be installed, if practicable, before work commences.

15.14 Expenses

The employer shall reimburse an employee any expenses reasonably incurred by them in the service or interest of the employer, provided the employee is able to prove such expense by way of receipts.

15.15 First aid

An employee on becoming qualified as the holder of appropriate first aid qualifications such as a certificate from the St Johns Ambulance or its equivalent, and who is required by the employer to perform first aid duty shall be paid an allowance of 1.70% of the SR per week.

15.16 Loading and discharge of cargo and supplies

- (a) An employee directed by the employer to load or discharge cargo including personal belongings of passengers, foodstuffs, beverages, or laundry, shall be paid allowances as set out below when so engaged:
- (i) On vessels including barges and landing craft transporting passengers and cargo including fuel and/or water and roll on/roll off cargoes between the mainland and island resort/s:
 - I. 2.99% of the SR per week of 5 working days
 - II. Where an employee is so engaged in any week in excess of 5 days he/she shall be paid an additional 0.61% of the SR per day
 - (ii) On vessels (including barges and landing craft) transporting cargo only between the mainland and island resort/s or between island resorts: 5.23% of the SR per trip
 - (iii) On vessels engaged in overnight cruises one to 6 nights 2.01% of the SR per trip
 - (iv) On vessels engaged in overnight cruises over 6 nights 3.00% of the SR per trip
 - (v) Provided that:
 - I. an additional amount shall be not payable where the loading or discharge is restricted to ships stores, fuel and/or water cargoes, incidental personal belongings of passengers, or other items required on board exclusively for a day cruise;
 - II. an employee may be required to supervise the loading or discharge (including roll on/roll off cargoes) where such work is part of their normal duties, without additional payment.

15.17 Meal Allowances

When an employee who is required to work overtime in excess of one and one-half hours after the usual ceasing time, without being notified the previous day, the employee shall be provided with a suitable meal or be paid 1.91% of the SR in lieu thereof. Should such overtime work continue for a further four hours, the employee shall be provided with a second meal or be paid 1.91% of the SR.

15.18 Waiting orders

- (a) An employee who is required by his employer to telephone for orders shall:
- (i) If an employee has a telephone installed at their home, be paid the annual rental of such telephone plus 16.51% of the SR for calls necessarily incurred by the employee for ringing for such orders. If the employee is required by their employer to have a phone installed, the installation fee shall be paid by the employer.

- (ii) An off-duty employee required to ring for orders other than on a phone provided totally or in part by the employer, shall receive as an allowance of 0.42% of the SR.

15.19 Tools

Where employees are required to provide and use their own tools the employer shall be responsible for the replacement of such tools broken, worn out, lost or stolen in the course of employment.

15.20 Towing

- (a) Employees on any vessel either towing or carrying explosives shall be paid an additional 0.29% of the SR for each day or part thereof while so engaged. This rate shall be treated as Part of the wages for all purposes of this award. For the purposes of this subclause, explosives means any material used as an explosive, such as gunpowder, blasting powder or materials, or any other material of like nature, but does not include petroleum products.
- (b) Masters engaged in towing non self-propelled bunker barges having a carrying capacity of 400 tons or more, shall be paid an additional amount of 0.27% of the SR for each day or Part thereof while so engaged. Provided always that moving such bunker barges at terminal points is not regarded as towing within this provision. This rate shall be treated as Part of the wages for all purposes of this award.
- (c) Employees on vessels proceeding beyond the limits of a harbour, river or bay shall whilst so engaged be paid an allowance of 25 per cent with a minimum payment for four hours.

15.21 Ships stranded or wrecked or on fire

- (a) If a ship in the course of a voyage becomes wrecked or stranded and the employees are called on for special efforts while the ship is still wrecked or stranded they shall, for the time during which they so assist, be paid 1.71% of the SR per hour.
- (b) For the purposes of this clause a ship shall be deemed to be wrecked if, while at sea, it is so disabled so as to be a dangerous crisis and unable for the time being to continue its voyage in the ordinary course of its operations.
- (c) Where a ship grounds in a tidal river or harbour and is refloated by ordinary means, with or without cargo, and without special work such as laying out anchors and handling hawsers being required of the employees, it shall not be deemed to be wrecked or stranded within the meaning of subclause (b).

15.22 Transport

- (a) Where an employee commences or finishes work or is required for call out between the hours of 11.00 p.m. and 6.00 a.m. the employer shall:
 - (i) Supply them with a conveyance to or from their home whichever is appropriate; or

- (ii) Pay them for time spent in reaching their home or travelling therefrom at their prevailing rate with a minimum of half an hour and a maximum of one hour; or
 - (iii) If by arrangement with their employer the employee uses their own motor vehicle they shall receive an allowance of not less than 0.09% of the SR per kilometre.
- (b) An employee who is required to use their own vehicle to travel to or from a starting or finishing point other than their regular starting or finishing point shall be paid, for the distance and time in excess of the distance or time involved in getting to their normal starting or finishing point, 0.10% of the SR per kilometre for the excess distance travelled and shall be paid at the prevailing rates of pay for the excess time occupied in travelling with a minimum of half an hour and a maximum of one hour.
- (c) Where an employee who is not required to use their own motor vehicle, and should in the ordinary course of employment begin their work for the day at a particular place, is required to finish work at a place other than that particular place they shall be paid any reasonable travelling expenses and shall also be paid at overtime rates of pay for any travelling time occasioned beyond their ordinary travelling time.

15.23 Travelling to another port

- (a) When an employee is required to travel from their home port to another port, time spent outside of their ordinary hours shall be paid for as travelling time.
- (b) The rate of pay for travelling time shall be ordinary rates, except on Sundays and holidays when it shall be time and a half.
- (c) The maximum travelling time to be paid for shall be eight hours on any one day.

15.24 Travelling expenses

Where an employee is required to join or leave a vessel at a place other than their place of engagement, they shall be entitled to a free passage and to be reimbursed all out of pocket expenses reasonably incurred by them. The free passage if by rail shall be first class and shall include a sleeping berth when the train includes sleeping berth accommodation. The free passage if by air is to be in commercial aircraft, first class if available.

15.25 Loading for duties outside normal work

An amount of 0.55% of the SR per day shall be paid in excess of other wages and allowances to employees, for each day they are required to perform the duties of diving to clean glass bottom boats or to clear obstructions from boats propellers.

15.26 Living away from home

- (a) Whilst away from the vessel's home port, an employer shall provide the employee with proper meals and accommodation and be responsible for

payment of reasonable expenses actually incurred for such meals and accommodation ashore.

- (b) Whilst at sea, every employee shall be provided with proper meals, attendance, bedding and soap, and be supplied once a week with clean bed linen and twice a week with clean towels. The employer shall be responsible for the laundering of linen and towels.
- (c) Where it is the employer's responsibility to provide the employee with proper meals and accommodation ashore, and the employer fails to do so the employer shall reimburse the employee for all costs incurred in relation to normal meals and charges incurred for a good standard of accommodation.
- (d) Tea, sugar, milk and coffee shall be provided on all vessels for employees at the employer's expense.

16. Mixed functions

An employee engaged for more than two hours during one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for such day. If engaged for two hours or less during one day he or she shall be paid the higher rate for the time so worked.

17. Payment of wages

Wages shall be paid weekly or fortnightly. Wages may be paid by cash or electronic funds transfer (EFT).

18. Superannuation

18.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

18.2 Employer contributions

- (a) An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

18.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 18.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 18.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or (b) was made.

18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(a) or (b) to one of the following superannuation funds:

- (a) the Stevedoring Employees Retirement Fund (SERF); or
- (b) the Seafarer's Retirement Fund (SRF) (REST); or
- (c) AMP Superannuation Savings Trust [MOST, AIMPE or MODIF]; or
- (d) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

18.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(a) or (b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
 - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
 - (ii) the employee remains employed by the employer.

Part 5—Hours of Work and Related Matters

19. Ordinary hours of work and rostering

19.1 This clause supplements Division 2 of the NES which deals with maximum weekly hours.

19.2 Span of hours

- (a) Ordinary hours may be worked between 6am and 6pm for up to 8 hours per day, Monday to Friday inclusive.

19.3 Rostering

- (a) Rostered Days Off shall be so arranged that in each week two of such days shall be consecutive except where the employer and the employee agree otherwise.

19.4 Avoidance of physical exhaustion

- (a) An employee who has been on duty continuously, including meal breaks, for more than 18 hours shall not be required by his employer to continue duty until he has had, for the purpose of rest, a period of 10 hours off duty.
- (b) Should an employee work at the request of the employer after he has been on duty continuously, including meal breaks for more than 18 hours, he shall be entitled to be paid at the rate of double time for the period of such duty in addition to any other payment due to him until such time as the 10 hours' respite from duty commences.
- (c) Employees shall receive their full weekly rate notwithstanding any rest period occurring in ordinary working hours.

20. Breaks

20.1 An employee shall not be required to work for more than five hours without a break for a meal.

(a) Breakfast

The hour preceding the usual starting time. The foregoing breakfast break shall not be taken when men are required to commence at 7.00 a.m. or after, and preceding the usual starting time.

- (i) By mutual agreement between the employer and employees concerned, a twenty minutes crib time may be taken without deduction of pay in lieu of the prescribed hour for breakfast. Such crib time shall commence twenty minutes before the usual starting time unless otherwise mutually agreed.
- (ii) Employees ordered in to dock or shift a vessel at 7.00 a.m. shall not be entitled to a meal break before noon, but if ordered in at any time before 7.00 a.m. they shall have an hour for breakfast not later than 8.00 a.m. or a crib time of twenty minutes as provided above.

(b) Lunch

Noon to 12.45 pm. or such period as is the usual custom of the establishment at which the men are employed.

(c) Tea

5.00 p.m. to 6.00 p.m. or according to the usual custom of the establishment at which the employees are employed. Provided that by mutual agreement between the employer and employee concerned a crib time may be taken.

(d) The times prescribed above may be altered by mutual agreement between the employer and employee concerned.

20.2 Double time shall be paid for all work done during the breakfast, lunch and tea breaks specified above, such double time to continue until the men are granted a meal break or are released from duty. This provision has no application to establishments or jobs where, in accordance with this clause, it is customary for paid crib times to be taken in lieu of the breakfast and/or tea breaks, and such crib times are allowed and taken.

21. Overtime and penalty rates

21.1 Employees will be entitled to be paid:

(a) A loading of 50% of the ordinary hourly base rate of pay for the first three hours, and 100% the ordinary hourly base rate of pay thereafter for any time worked outside of ordinary hours on a Monday to Friday, except for public holidays.

(b) For all ordinary hours and overtime worked between midnight Friday and midnight Saturday a loading of 50% of the ordinary hourly base rate of pay.

(c) For a minimum of four hours if recalled to work overtime after leaving the employer's premises.

21.2 Time off instead of overtime payment

(a) An employee may elect, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer.

(b) The employee may take one hour of time off for each hour of overtime, paid at the employee's ordinary hourly base rate of pay.

21.3 Shift work penalties

(a) An employee whilst on early morning shift or afternoon shift will be paid a loading of 13.23% of the standard rate per hour.

(b) An employee whilst on night shift will be paid a loading of 15.73% of the standard rate per hour.

- (c) An employee whilst on permanent night shift will be paid a loading of 29.86% of the standard rate per hour.

21.4 Sunday work

An employee will be paid a loading of 100% of the ordinary hourly base rate of pay for any hours, ordinary and overtime, worked on a Sunday.

21.5 Public holidays

An employee will be paid a loading of 150% of the ordinary hourly base rate of pay, for any hours, ordinary and overtime, worked on a public holiday.

22. Shiftwork

22.1 The following shifts may be worked:

- (a) **Afternoon shift** means any shift finishing after 6.00 p.m. and at or before midnight.
- (b) **Continuous work** means work carried on with consecutive shifts of men throughout the 24 hours of each of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.
- (c) **Night shift** means any shift finishing subsequent to midnight and at or before 8.00 a.m.
- (d) **Permanent night shift** employee means an employee who
- (i) During a period of engagement on shift, works night shift only; or
 - (ii) Remains on night shift for a period longer than four consecutive weeks;
 - (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least 1/3rd of his working time off night shift in each shift cycle shall during such engagement period or cycle.

22.2 Shiftwork rates

Type of shift	Shift rate
Afternoon shift	115% of the ordinary time rate
Night shift	115% of the ordinary time rate
Permanent night shift	130% of the ordinary time rate

Part 6—Leave and Public Holidays

23. Annual leave

The following provisions supplement the NES.

23.1 Annual leave loading

A loading of 17.5% (20% for shift workers) is payable in addition to the payment for the leave.

23.2 Shiftworkers

For the purpose of Division 5 of the NES a shiftworker is a employee employed on shift work where three shifts per day are worked over a period of seven days per week or an employee regularly rostered to work on Sundays and public holidays.

23.3 Requirement to take annual leave

Annual leave must be taken within 6 months of the entitlement accruing. An employer may require an employee to take a period of annual provided the employee is given at least 14 days notice.

24. Personal/carer's leave and compassionate leave

24.1 Personal/carer's leave and compassionate leave are provided for in Division 6 of the NES.

25. Community service leave

Community Service leave is provided for in Division 7 of the NES.

26. Public holidays

26.1 Public holiday entitlements are provided for in Division 9 of the NES.

26.2 An employee shall be paid at the rate of double time and a half with a minimum of 4 hours work when required to work on a public holiday.

27. Accident Pay

27.1 Subject to clause 28.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and

Parties' Draft (MUA, AIMPE): Port Harbour and Enclosed Water Vessels Award 2010

- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.
- 27.2** The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.
- 27.3** This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.
- 27.4** This clause ceases to operate on 31 December 2014.

Schedule A—Classifications

A.1 Master

A master is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.2 Mate

A mate is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority

A.3 Engineer

A engineer is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.4 General Purpose Hand

A general purpose hand is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.5 Deckhand

A deckhand is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.6 Greaser

A greaser is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.7 Passenger attendant

A passenger attendant is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.8 Turnstile attendant

A turnstile attendant is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime

Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.9 Boating attendant

A boating attendant is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.10 Fireman

A fireman is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.11 Trimmer

A trimmer is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.12 Linesman

A linesman is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.13 Sailor

A sailor is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.14 Able Seaman

A able seaman is an employee who holds a certificate of competency in accordance with Marine Orders –Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State of Territory authority.

A.15 Cook

A cook is an employee who holds an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

A.16 Host/hostess

A host/hostess is an employee who holds an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

A.17 Crane Driver

A crane driver is an employee who holds an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

A.18 Shipkeeper

An employee on board a vessel in port and available for the performance of any duty.

AMOU 3

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Award Modernisation

Maritime Industry

(AM2008/41)

Oil & Gas Industry

(AM2008/44)

Port and Harbour Services

(AM2008/49)

SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA (MUA)

AND

THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS (AIMPE)

1. The MUA and the AIMPE submit that the 42 awards and NAPSA's (See Schedule A) currently operating in the maritime industry, off shore oil and gas industry, ports and harbour services, public transport industry (in relation to the Stradbroke ferries) and Tourism industry (in relation to the Whitsunday charter boats) be replaced by seven (7) awards as follows:

Seagoing Industry Award 2010 which has coverage of employers engaged in or in connection with vessels trading as cargo or passenger vessels which in the course of such trade proceed to sea (on voyages outside the limits of bays, harbours or rivers) and their employees in defined classifications.

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Dredge Industry Award 2010 which has coverage of employers in the dredge industry and their employees in defined classifications.

Offshore Oil and Gas Award 2010 which has coverage of employers in the offshore oil and gas industry and their employees in defined classifications.

Tug Industry Award 2010 which has coverage of employers in the tug industry and their employees in defined classifications.

Port Harbour and Enclosed Water Vessels Award 2010 which has coverage of employers in the port, harbour and enclosed water vessels industry and their employees in defined classifications. Some of the vessels previously covered by awards which have been absorbed into this award do proceed beyond enclosed waters; however their operations and current award conditions fit more comfortably into this award than the proposed Seagoing Industry Award 2010 or any other industry award.

Port Authorities and Port Construction Award 2010 which has coverage of employers in the port authorities and port construction industry and their employees in defined classifications.

Stevedoring Industry Award 2010 which has coverage of the stevedoring industry and their employees in defined classifications.

2. Seven separate draft awards and submissions on behalf of our clients supporting the making of each of those seven awards have been filed with the commission and are published on the Commissions award modernisation web site.
3. In preparing these drafts we believe we have followed and had regard to Part 10A *Workplace Relations Act 1996* the anticipated provisions of the Fair Work Australia Act, the section 576C(1) Ministerial Request dated 16th June 2008 and the principles and practices relating to award modernisation as pronounced by the Commission in their various statements and decisions since the request. We have attempted to reflect and reproduced the current award conditions which are relevant to the award modernisation process in the proposed award conditions. In some cases we have been able to

consolidate the various standards contained in the various awards which are incorporated into the modern awards. In some cases, eg the Tug Award 2010, we have not been able to do so. We will continue these attempts during the exposure draft phase in consultation with other parties and will report any progress to the Commission.

4. Since filing those submissions we have had the opportunity of considering the submissions of other parties relevant to the industries covered by those draft awards and where necessary have conferred with those parties. As a result we make the following further submissions in respect to each award.
5. We have considered each of the submissions and to the extent they are available draft awards proposed by the other parties with interests in the various areas where our clients have made submissions and proposed awards. We maintain that the awards that we proposed are appropriate, but wish to make our position clear as to our client's attitude about the matters raised by the other parties.
6. In relation to the **Seagoing Industry Award 2010**

Australian Mines and Metals Association

Australian Metals and Mines provided a draft award which we comment on below:

- a. We oppose the inclusion of the new concept of a work cycle. This appears through the draft including the definitions and the hours of work clause;
- b. The proposed coverage is limited to a defined category of Seagoing Vessels. This definition is more restrictive than the definition of vessels in the current Maritime Industry Seagoing Award 1999. The coverage does not apply to employers "in or in connection with" such vessels. Both these matters unduly restrict the coverage of the modern to a more limited class than currently exists.
- c. The creation of new categories of full-time and part-time employment is opposed. These are not concepts known to the industry. The industry has permanent employees and casual/relief employees. As a matter of practice vessels proceed to sea on a swing that is not of a fixed duration. It is not appropriate that a vessel

away from shore for periods exceeding a week should have employee who are employed to work less than 38 hours per week. It is misleading to re-label casual as fixed term employees as it is not possible at the beginning of a swing to provide an exact end date of the swing.

- d. There is no basis for providing for a probationary period of more than 3 months. It is not a current condition in the industry and is opposed;
- e. The proscriptive requirements in relation to employer and employee duties (clause 13.4) are not current conditions and are opposed.
- f. The reduction in payments on termination of employment to the NES is opposed. The currently conditions should be maintained.
- g. We do not oppose the addition of the new concepts of “transfer to lower paid duties” and “employee leaving during notice period”. They are provisions created by the Full Bench in their decision of 12 September 2008;
- h. The explanation of the aggregate wage (clause 13.3) provides unnecessary detail and should be omitted.
- i. The new right of employers to pay employees monthly is opposed. The current provision of monthly payments only by consent should be maintained.
- j. The reference to the Navigation Act in the Personal/Carer’s leave clause should be removed. It is unnecessary.
- k. The deletion of the “Meals whilst travelling by air” allowance is opposed. The current provision should be maintained.
- l. The deletion of the “Conveyance” allowance is opposed. The current provision should be maintained.

Australian Maritime Officers' Union.

We support their proposed extension to the coverage clause following the order of Commissioner Raffaelli PR969407 which varied MISA on 24 March 2006 and for the inclusion of the additional categories.

CSL Australia Pty Ltd

- a. We oppose each of the matters raised by CSL in their submissions. Their submissions ignore the requirement of the request from the Minister that the creation of modern awards is not intended to disadvantage employees (clause 2(c)). Their submissions are an unashamed attempt to drive down wages and conditions.
- b. The coverage of their proposed award is unnecessarily limited to Australian registered ships. There is no basis for this limitation. It is not reflective of the current scope of the Maritime Industry Seagoing award 1999, the Workplace Relations Act 1996 or those of the proposed Fair Work bill 2008. The scope of later will not be set until any regulations are made as they can extend or reduce the jurisdiction of the Act (see sections 31 - 35 of the Fair Work Bill).
- c. There is no ability in the award modernisation process to revisit the setting of conditions in an award that has been simplified by the Commission. (In the case of the Maritime Industry Seagoing Award 1999 the relevant decisions are Q9604 and the Commissioner's decision about properly fixed minimum rates which is contained in Transcript of 19 October 1999 in C007 of 1998 at pages 28 and 29). The fact that the award contains properly fixed minimum rates was further confirmed by Commissioner Lawson in PR919859, proceedings that involved CSL Australia Pty Ltd.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

AMP Life Limited

We oppose AMP Superannuation Savings Trust being named as the default fund. The appropriate funds are set out in our proposed award.

Sunsuper Pty Ltd

We oppose Sunsuper being named as a default fund. The appropriate funds are set out in our proposed award

7. In relation to the **Dredge Industry Award 2010**Local Government Association of NSW

We do not oppose their proposed exclusion in to this award. It only relates to the very small number of councils that may engage staff to operate dredges in relation to land reclamation, canal development, foreshore improvements and environmental engineering to improve title flows from rivers and lakes.

Dredging Industry Industrial Secretariat (McCarthy Ausgroup)

Those submissions support the creation of a modern award for this separate industry.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

8. In relation to the **Offshore Oil and Gas Award 2010**Australian Workers' Union

We support the coverage of the Offshore Oil & Gas Industry. It is in the same terms but formatted differently to our draft. They have added the terms and conditions for the other categories of employees as foreshadowed in our submissions.

Australian Mines and Metals Association

AMMA has provided a comprehensive draft which we make the following comments in relation to:

- a. The creation of concepts of cycle work throughout the award is a new concept to the industry and is opposed on that basis. The maritime employees in this industry swing on and swing off which is a different concept to the cycle work that occurs in other parts of the Oil and Gas Industry;
- b. Coverage is unnecessarily limited to defined "offshore vessels" and fails to include those that are engaged "in or in connection with" those vessels. The coverage clause proposed by our clients should be adopted by the Commission. It more properly reflects the definition of the industry;
- c. The creation for the first time categories of part-time employment and conversion casual/relief employment into fixed term/relief employment. Part-time employment has no place in the industry. Employees go to work on a swing and whilst so engaged perform hours of work well in excess of 38 hours per week. It is not of practical utility to have persons on such facilities and vessels that would need a requirement of working less than 38 hours a week. The use of the term "fixed term" is not appropriate. The term is not fixed in the traditional sense in that whilst you leave shore with an indication that you might be gone for 2 weeks due to environmental matters, and in particular weather, the period of the swing may be longer or shorter;
- d. There is no basis for providing for a probationary period of more than 3 months. It is not a current condition in the industry and is opposed;
- e. The proscriptive requirements in relation to employer and employee duties (clause 13.5) are not current conditions and are opposed.
- f. The reduction in payments on termination of employment to the NES is opposed. The currently conditions should be maintained.

- g. We do not oppose the addition of the new concepts of “transfer to lower paid duties” and “employee leaving during notice period”. They are provisions created by the Full Bench in their decision of 12 September 2008;
- h. The explanation of the aggregate wage (clause 13.3) provides unnecessary detail and should be omitted.
- i. The removal of short hand allowance for vessels (clause 14.9) is opposed;
- j. The omission of the right of an Integrated Rating to take study leave is opposed. This right is granted by clause 14 of the Floating Productions Facilities Award and should be maintained;
- k. The leave provisions fail to properly reflect what is in the industry currently. The current provisions should be maintained.
- l. The reference to the Navigation Act in Personal/Compassionate leave is unnecessary and should be omitted;
- m. We oppose the inclusion of a Maximum Weekly Hours clause in the terms provided. This is properly dealt with in the two crew duty system as set out in our draft;
- n. The insertion for the first time of a Meal Breaks clause fails to reflect reality. The provision of a minimum of 30 minute unpaid meal break should be increased to one of 60 minutes in duration.

CFMEU

We do not oppose the creation of a coal treatment industry in the terms expressed by the CFMEU. All coal terminals other than Gladstone and dedicated coal ports that have their terms and conditions of employment set by enterprise awards.

Communications, Electrical and Plumbing Union (CEPU).

We do not oppose the exclusion of electrical contractors from the modern award. Our draft award only seeks to cover employees.

The Association Professional Engineers Scientist and Managers, Australia

We do not oppose the creation of an occupational award for their members. We would like to see the scope of that proposed award before commenting further.

Oil Industry Industrial Committee

Their submission supports the separation of the maritime aspect of the industry from the balance of the industry. For clarity we submit that their exclusion should extend to Masters, Facility Masters, Electrical Engineers, Marine Electricians, Deckhands, Provisional Integrated Ratings and Bosuns.

Australian Industry Group

We do not oppose their proposed exclusion for Maintenance Contractors. Our draft award only seeks to cover employees.

Australian Manufacturing Workers Union

We support the continuing operation of the Manufacturing Association Industries and Occupational Award 2010 for engineering, maintenance and laboratory workers.

LHMU

We oppose their proposed exclusion. The LHMU have no members involved in the Offshore Oil and Gas Industry as defined by our proposed award. The exclusions will create confusion as our draft award reflects the current position of conditions for Chief Caterers, Chief Cooks, Cooks, Chief Stewards, Catering Integrated Ratings, 2nd Cooks, Head Cooks, Other Cooks and Other Cooks. The provisions that currently relate to this area of work should be adopted rather than those that are contained in the Hospitality Industry (General) Award 2010.

Australian Services Union

We are unaware of any clerical or administrative employees involved in the industry in the way it is defined in our proposed Offshore Oil & Gas Industry 2010. Their inclusion is opposed.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund in the award. The appropriate funds are listed in our draft award.

AMP

We oppose the AMP Superannuation Savings Trust being a default superannuation fund in the award. The appropriate funds have been named in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

9. In relation to the **Tug Industry Award 2010**

Maritime Towage Employer Group

We agree on coverage and that this should be regulated by a separate modern award. We part ways in the following respects

- a. We do not agree to the removal of a regular pattern of work from the current part-time employment provisions.
- b. The Notice of Termination provisions should include a requirement to be returned to port. This arising as a consideration when doing special voyages.
- c. We do not agree to the reduction of the provisions for Special voyages, outside voyages and all the other port specific allowances to single allowances. Each allowance reflects the historical position that each port had its own award. There

is no easy way of reducing all those provisions to single amounts from the type of activity performed without either reducing entitlements for employees or increasing the burden on employers. If such a single allowance is to be created for each matter then in order to ensure employees are not out of the highest entitlement in each circumstance should be adopted and the currently provisions transitioned for 5 years.

- d. We oppose the reduction of the leave factor for Tug and Barge employees. There is no basis for the reduction of a current condition.
- e. We oppose the removal of the maximum hours of work clause which currently applies to the Tug and Barge employees.
- f. The length of any meal break should not be set at the shortest period of time as proposed. If these meal break times are to be reduced to a single period of time for every port then the longest period should be adopted. In the meantime the current provisions should be transitioned for 5 years.
- g. The reduction of compassionate leave to the NES from 3 days is not warranted.
- h. We are prepared to accept the “industrial protective and protective clothing” from the Tug Boat Industry Award in lieu of those contained in our draft.
- i. The removal of 13% superannuation for Tug and Barge employees is unwarranted and is opposed.

Ports Australia

Their submission supports towage and tug Services being treated as a separate industry.

Australian Services Union

We do not consider it is appropriate that clerical officers under the Clerical Industry – Shipping Officers Award 2003 be included in the Tug Boat Industry Award 2010. They should remain covered by the Clerks – Private Sector Award 2010.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund. The appropriate funds are named in our draft award.

First State Super

We do not support First State Super being nominated as the default fund. The appropriate funds are set out in our draft award.

AMP Life Limited

We oppose the nomination of the AMP Superannuation Savings Trust as the default superannuation fund. The appropriate funds are set out in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

CEPU

We do not oppose the exclusion of electrical contractors. Our awards only seek to cover employees.

AMWU

We do not oppose Engineering and Metal Maintenance employees being placed in a Manufacturing and Associated industries and Occupations Award 2010.

10. In relation to the **Port Harbour and Enclosed Water Vessels Award 2010**

Commercial Vessel Association

- a. We oppose either the placing of *Marine Charter Vessels (State) Award AN120330* in the Tourism and Leisure Industry Group or the making an industry award based solely on its terms. Our proposed award consolidates award that have coverage provisions that are relevant to this consideration namely:
1. masters, engineers, principals and charge, launch masters in charge of vessels engaged in the conveyances of passengers (see Master and Engineers Award – Port of Brisbane 2003);
 2. masters, mates, engineers, principals and charge and launch masters operating on the coast of and in the ports of Queensland engaged in the excursion trade, passenger trade (see Masters, Mates and Engineers Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under – State (Excluding the Port of Brisbane) 2003.)
 3. masters, mates and engineers employed on or about surveyed passenger vessels or other vessels operating coastal waters (see Masters, Mates and Engineers Passenger Ferries Award)
 4. Motor ferries used in any regular ferry passenger work (see Motor Ferries State Award;)
 5. Shipping, including the operations of ferries, barges, crews vessels and charter vessels (see the Shipping Award)
 6. Persons employed as crew persons on ketches, schooners and other similar sailing or auxiliary sailing vessels in commercial survey and over 25 metres measured length (see Ketches and Schooners Award); and
 7. Vessels engaged wholly or principally within the limits bays, harbours and rivers (see Port Services Award 1998)

- b. It is somewhat artificial to splice out the Marine Charter Vessels (State) Award from this list. The industry is properly defined by our Port Harbours and Enclosed Water Vessels Award 2010.

The Australia Federation of Employers and Industries

We oppose their proposed creation of a *Tourism and Leisure Charter Vessels Award 2010* based solely on the Marine Charter Vessels (State) Award. The reasons for that opposition are set out in relation to the submissions of the Commercial Vessels Association above.

Whitsunday Charter Boat Industry Association – filed in AM2008/59

We oppose the creation of the Tourism Boating Award 2010 based solely on the Whitsunday Charter Boat Industry Interim Award – State 2005 AN140315. It is not in keeping with the Award Modernisation principals that a single NAPSA be converted into a modern award. This is particularly the case when there are a number of awards being consolidated that deal with commercial vessels that carry passengers whether or not they are engaged in regular schedule passenger transport or otherwise. We otherwise repeat our submissions in relation to the Commercial Vessels Association above.

Local Government Association

We oppose the proposed exclusion of Local Government from the award. It is said to relate to car ferries operated by Local Government. We are aware that there numerous car ferries in both private and public control. They should all be regulated by the one instrument, our proposed award. An example of an industrial instrument covering such ferries is the Wire Drawn Ferries (State) Award.

CEPU

We do not oppose the exclusion of electrical contractors. Our awards only seek to cover employees.

AMWU

We do not oppose Engineering and Metal Maintenance employees being placed in a Manufacturing and Associated industries and Occupations Award 2010.

Sydney Ferries Corporation

- a. We oppose Sydney Ferries Corporation being placed in the Public Transport Industry (other than Rail) Award. All the other awards in that “industry” relate to omnibus, tramways or light rails operations. It is more appropriate that Sydney Ferries, being an operator of passenger ferries have their award conditions set by an award that covers all the other ferries. Our award consolidates for following relevant coverage that would need to be considered before such a submission was accepted:

1. Passenger ferries (see *Deckhands (Passenger Ferries, Launches and Barges) Award*.)
2. Mates, Masters and Engineers and Principals in charge and Launch Masters on motor vessels engaged in the passenger trade (see *Masters, Mates and Engineers Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under – State (Excluding the Port of Brisbane) 2003 Award*,
3. Conveyance of passengers (see *Masters and Engineers Award – Port of Brisbane Award*)
4. Passenger vessels (see *Master, Mates and Engineers Passenger Ferries Award*)
5. Those engaged on Motor Ferries (see *Motor Ferries (State) Award*,)
6. operation of ferries (see *Shipping award*)

7. those engaged in respect of vessels engaged wholly or principally within the limits of bays, harbours and rivers (see *Port Services award* that currently regulates Sydney Ferries Corporation)
- b. It is somewhat artificial to splice out Sydney Ferries. The industry is properly defined by our Port Harbours and Enclosed Water Vessels Award 2010.

Stradbroke Ferries Pty Ltd Enterprise Award – State 2005 AN140280

- a. This is the only industrial instrument that relates to a vessel that is contained in the Public Transport Industry (other than Rail) list of awards prepared by the Commission. All other types of ferries, motor boats, motor craft etc., have been placed either in the Maritime Industry grouping or the Port and Harbour Services grouping. We submit the grouping of awards that we have consolidated into our Port Harbours and Enclosed Waters Award appropriately covers Stradbroke Ferries Pty Ltd employees and their classifications and the type of work that is performed. Despite the title of that award it covers vessels that also proceed to sea such as those of the Stradbroke Ferry. A number of areas of coverage that are relevant to this consideration have been set out above.
- b. All the unions in the Public Transport (other than Rail) Industry consider that this award should be placed in a maritime style award. It would be artificial to do otherwise. The appropriate instrument is our draft Port Harbours and Enclosed Water Vessels Award 2010.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund. The appropriate funds are named in our draft award.

First State Super

We do not support First State Super being nominated as the default fund. The appropriate funds are set out in our draft award.

AMP Life Limited

We oppose the nomination of the AMP Superannuation Savings Trust as the default superannuation fund. The appropriate funds are set out in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

11. In relation to the **Port Authorities and Port Construction Award 2010**

CEPU

We do not oppose the exclusion of electrical contractors. Our awards only seek to cover employees.

AMWU

We do not oppose Engineering and Metal Maintenance employees being placed in a Manufacturing and Associated industries and Occupations Award 2010.

APESMA

We do not oppose the creation of a separate occupational award for their members and are happy to have negotiations with them over their proposal that the Professional Engineers and Scientists be included in the Port Authorities and Port Constructions Award. We would like to see their proposal so such consideration can be given.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund. The appropriate funds are named in our draft award.

First State Super

We do not support First State Super being nominated as the default fund. The appropriate funds are set out in our draft award.

AMP Life Limited

We oppose the nomination of the AMP Superannuation Savings Trust as the default superannuation fund. The appropriate funds are set out in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

12. In relation to the **Stevedoring Industry Award 2010**Australian Services Union

Our draft Stevedoring Industry Award 2010 (clause 4.5(f)) provides an appropriate level of coverage of clerical and administrative employees for this industry. The award term has been in that form for many years and we know of no reason to alter it.

CFMEU

We do not oppose the creation of a Coal Treatment Industry in the terms sought by the CFMEU for the reasons set out above.

Coal Terminals Group

We support the creation of a separation of coal award for the reasons set out above.

Livingstons Australia/Gladstone Ports Corporation

There submissions support stevedoring being treated as a separate industry but further split our Bulk Handling. We do not support this further split. In the circumstances that we

consider that sugar, aluminum and coal should all be considered separately to stevedoring there is too small a group of areas left to be covered by such an award.

Ports Australia

- a. Their submission supports Stevedoring being treated as a separate industry.
- b. We do not agree that construction should be excluded from the Ports Award. The construction of wharves, piers and other matters relating to ports has traditionally been considered part of the one industry (see for example their inclusion in the Queensland Regional Port Authorities and Corporations Employees Interim Award 2000 (AP794137))
- c. Similarly the traditional 3 grouping classification system that has been used for years. There is no reason it should not be maintained. Our award provisions should be adopted.

P & O Automotive and General Stevedoring Pty Ltd

Their submission supports the creation of a Stevedoring Industry specific award.

DP World Australia Ltd

Their submission supports the creation of a Stevedoring Industry specific award.

Patrick Stevedores Holdings Pty Ltd

Their submission supports the creation of a Stevedoring Industry specific award.

Queensland Sugar Limited

We support an exclusion for sugar from Stevedoring Industry Award 2010 and Ports Authorities and Port Construction Award 2010. Our proposed exclusion is set out in our draft awards.

Australian Workers' Union

We support their proposed exclusions for Sugar and Aluminum and have included them in our drafts. We are still obtaining instructions in relation to their proposed Steel, and Oil and Gas exclusions.

CEPU

We do not oppose the exclusion of electrical contractors. Our awards only seek to cover employees.

AMWU

We do not oppose Engineering and Metal Maintenance employees being placed in a Manufacturing and Associated industries and Occupations Award 2010.

Sunsuper Pty Ltd

We do not support Sunsuper being named as a default fund. The appropriate funds are named in our draft award.

First State Super

We do not support First State Super being nominated as the default fund. The appropriate funds are set out in our draft award.

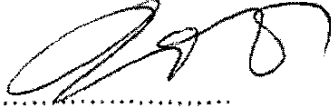
AMP Life Limited

We oppose the nomination of the AMP Superannuation Savings Trust as the default superannuation fund. The appropriate funds are set out in our draft.

Group Training Australia

This is a new concept for the industry and no special submissions have been made for their inclusion in this industry. They should not be included.

Dated: 18 March 2009



.....
William Grant McNally
Solicitor for the Maritime Union of Australian and
The Australian Institute of Marine and Power Engineers



.....
Nathan Keats

AIRC industry grouping	Name of instrument	Pub ID	Our grouping
Maritime	Dredging Industry (AWU) Award 1998	<u>AP778702</u>	Dredging
Port and harbour services	Dredging Industry (AWU) Award 1998	<u>AP778702</u>	Dredging
Maritime	Marine Engineers (Non Propelled) Dredge Award 1998	<u>AP788027</u>	Dredging
Maritime	Maritime Industry Dredging Award 1998	<u>AP787991</u>	Dredging
Maritime	Marine Engineers (Seagoing and Offshore Industries) Long Service Leave Award 1993	<u>AP788173</u>	N/A
Maritime	Maritime Industry (Seamen, Cooks and Stewards) Long Service Leave Award 1995	<u>AP788677</u>	N/A
Maritime	Maritime Officers (Seagoing and Offshore Industries) Long Service Leave Award 1993	<u>AP788130</u>	N/A
Port and harbour services	New South Wales Colliers and Small Ships (State) Award	<u>AN120365</u>	N/A
Maritime	Self-propelled Barge and Small Ships Industry Award 2001	<u>AP810149</u>	N/A
Maritime	Shipping Industry Loss of Certificate of Competency Award 2003	<u>AP825628</u>	N/A
Port and harbour services	Stevedoring Industry (Long Service Leave) Award 1992	<u>AP796037</u>	N/A
Port and harbour services	Transport and Storage Industry Sector - Minimum Wage Order - Victoria 1997	<u>AP800417</u>	N/A
Port and harbour services	Waterfront Employees (Superannuation Contributions) Award 1986	<u>AP802332</u>	N/A
Port and harbour services	Bulk Terminals Award - State 2003	<u>AN140048</u>	N/A – enterprise award
Oil and gas industry	AWU Oil Drilling Rig Workers (Offshore Platform Drilling Rigs) Award 2001	AP812665	Offshore Oil & Gas
Oil and gas industry	Floating Production Facilities Award 2000	AP805290	Offshore Oil & Gas
Oil and gas industry	Maritime Industry Offshore Oil and Gas Operations Award 2003	AP826061	Offshore Oil & Gas
Oil and gas industry	Oil Drilling Rig Workers (Offshore Mobile Drilling Rigs) Award 2001	AP812663	Offshore Oil & Gas

Port and harbour services	Marine Stores Award	<u>AN160196</u>	Port Authorities and Port Construction
Port and harbour services	Maritime Union of Australia (Ship Services) Award 2002	<u>AP816677</u>	Port Authorities and Port Construction
Port and harbour services	New South Wales Port Corporations Award 1999	<u>AP791641</u>	Port Authorities and Port Construction
Port and harbour services	NSW Port Corporations Award 2001	<u>AN120376</u>	Port Authorities and Port Construction
Port and harbour services	Port Stanvac Marine Award	<u>AN150113</u>	Port Authorities and Port Construction
Port and harbour services	Ports of Victoria Consolidated Administration Award 1998	<u>AP792487</u>	Port Authorities and Port Construction
Port and harbour services	Queensland Regional Port Authorities and Corporations Employees Interim Award 2000	<u>AP794137</u>	Port Authorities and Port Construction
Port and harbour services	Regional Port Authority Officers' (Queensland) Award 1999	<u>AP794800</u>	Port Authorities and Port Construction
Port and harbour services	Tasmanian Ports Corporations Award 2002	<u>AP819542</u>	Port Authorities and Port Construction
Port and harbour services	Victorian Port and Harbour Services Consolidated Operational Award 1998	<u>AP802100</u>	Port Authorities and Port Construction
Port and harbour services	Deckhands (Passenger Ferries, Launches and Barges) Award	<u>AN160097</u>	Port Harbour and Enclosed Water Vessels
Maritime	Ketches & Schooners Award	<u>AN150068</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Marine Charter Vessels (State) Award	<u>AN120330</u>	Port Harbour and Enclosed Water Vessels
Maritime	Maritime Award - Brisbane River and Moreton Bay 2003	<u>AN140163</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Masters and Engineers' Award - Port of Brisbane 2003	<u>AN140164</u>	Port Harbour and Enclosed Water Vessels

Port and harbour services	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane) 2003	<u>AN140165</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Masters, Mates and Engineers Passenger Ferries Award	<u>AN160199</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Motor Boats and Small Tugs (State) Award	<u>AN120350</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Motor Ferries State Award	<u>AN120351</u>	Port Harbour and Enclosed Water Vessels
Maritime	North Queensland Boating Operators Employees Award - State 2003	<u>AN140190</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Port Authorities Award - State 2003	<u>AN140213</u>	Port Harbour and Enclosed Water Vessels
Port and harbour services	Port Services Award 1998	<u>AP792489</u>	Port Harbour and Enclosed Water Vessels
Maritime	Shipping Award	<u>AN170095</u>	Port Harbour and Enclosed Water Vessels
Public Transport Industry (other than rail)	Stradbroke Ferries Pty Ltd Enterprise Award 2005	AN140280	Port Harbour and Enclosed Water Vessels
Tourism industry	Whitsunday Charter Boat Industry Interim Award - State 2005	AN140315	Port Harbour and Enclosed Water Vessels
Port and harbour services	Wire Drawn Ferries (State) Award	<u>AN120650</u>	Port Harbour and Enclosed Water Vessels
Maritime	Maritime Industry Seagoing Award 1999	<u>AP788080</u>	Seagoing
Port and harbour services	Stevedoring Australian Vocational Training System Award 2000	<u>AP796383</u>	Stevedoring
Port and harbour services	Stevedoring Industry Award 1999	<u>AP796113</u>	Stevedoring

Maritime	Tug and Barge Industry (Interim) Award 2002	<u>AP824200</u>	Tug
Port and harbour services	Tug and Barge Industry (Interim) Award 2002	<u>AP824200</u>	Tug
Port and harbour services	Tugboat Industry Award 1999	<u>AP799111</u>	Tug

AMOU 4

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Award Modernisation

The Tourism Industry, Travel Industry

(AM2008/59)

and

Port and Harbour Services

(AM2008/49)

SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA

AND

THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS

**IN OPPOSITION TO THE MAKING OF THE PROPOSED MARINE TOURISM AND
CHARTER VESSELS AWARD 2010**

Introduction

1. We are the lawyers for the Maritime Union of Australia and the Australian Institute of Marine & Power Engineers. Our clients are opposed to the creation of the proposed Marine Tourism and Charter Vessels Award 2010 (the "Award") as it is not possible to develop an appropriate award coverage that is logical and sensible.

Coverage

2. The proposed coverage does not deal with the difficulties in determining which award applies that were highlighted during the public consultations before SDP Watson (PN19-20; 125)

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3. The content of the Award reflects a choice of the lowest conditions and in some cases a deterioration of even those conditions. The Award does not meet that aspect of the request from the Minister (paragraph 2(c)) that the creation of a modern award is not intended to disadvantage employees. The Award will have precisely that affect.
4. The award is crafted from 3 NAPSAs:
 - a) Marine Charter Vessels (State) Award – NSW;
 - b) Whitsunday Charter Boat Industry Interim Award – State 2005 - QLD;
 - c) North Queensland Boating Operators Employees Award – State 2003 - QLD.
5. The Award fails to give any consideration of the Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 kW.B.P. and Under – State (Excluding the Port of Brisbane) 2003. This award applies to Master, Mates and Engineers for the following employers identified in the Whitsunday Charter Boat Industry Interim Award – State 2005 (clause 1.3):
 - Club Crocodile Holdings Limited trading as Club Crocodile Long Island – ACN – 010 715 901 Holiday villages (Australia) Pty Ltd trading as Club Med Lindeman Island – ACN – 003 758 610
 - Great! Keppel Island Resort Pty Limited trading as Great! Keppel Island Resort – ACN 075 964 359
 - Mulpha Hotel Pty Ltd trading as Hayman Resort – ACN – 070 662 627
 - Lady Elliot Island Holdings Pty Ltd trading as Lady Elliot Island Reef Resort – ACN – 010 563 005
 - Arenco Holdings Pty Ltd trading as Orpheus Island Resort ABN – 44 010 564 771
 - Bedarra island Pty Ltd ABN – 67 010 225 811
 - Brampton Island Pty Ltd -- ABN – 64 081 108 198

- Dunk Island Pty Ltd – ABN – 35 000 033 456
- Heron Island Pty Ltd – ABN – 67 009 724 921
- Lizard Island Pty Ltd – ABN – 85 010 494 096

6. The three NAPSAs are also too narrow a base for the proposed coverage. We have previously identified other relevant awards at paragraph 10 of our submissions dated 18 March 2009.
7. The employers also seek to have a classification of dive instructor/dive master (clause 21.1(a)). The Diving Industry has been placed in stage 4 of the award modernisation process. No attempt is made to explain the interface of this classification with any modern Diving Award 2010. Currently there exists a pre-reform award - Recreational Diving Industry Award 2001 - that applies:

“to the employment of persons in, or in connection with, diving in the provision of recreational diving, and related shipboard and underwater services in all areas within the Commonwealth of Australia and all areas that fall within the territorial jurisdiction of the Commonwealth of Australia.” (Clause 5)

8. The dive instructor/dive master classification should be dealt with in stage 4.
9. There are a number of unusual aspects to the Award which we comment on below.

Types of employment (Part 3)

10. Part 3 of the Award sets out provisions for full-time, part-time and casual employment. The part is prefaced by a note that requires an employer at the beginning of employment to specify whether the engagement is “on a casual daily basis, casual hourly basis or a weekly basis”. There is no attempt to explain how these categories relate to full-time, part-time and casual employment.
11. It appears the employers seek to create a concept of “daily non-casual employment”. For example:

- a) in clause 16.4(a) there is a distinction between the notice of termination for a daily casual employee and that of a daily employee; and
- b) a daily rate of pay for full-time and part-time employees is set out in clause 21.1(a). It is said to include compensation for all weekend and public holiday penalties and applies to different classifications to those contained in clause 22.1 which applies to weekly employees.

12. Given the list of types of employment contained in s.576J(1)(b) of the Workplace Relations Act, daily non-casual employment is not a type of employment that should be included in a modern award.

Abandonment of Employment (clause 15)

13. Abandonment of Employment is not dealt with any of the 3 source awards that the employers have used. In accordance with the decision of the Full Bench of 19 December 2008 [2008] AIRC FB 1000 the provision should not be included.

Classification and adult minimum wages (clause 19)

14. In clause 19.1 there is a reference to a "excluded employee". We do not know what such an employee is given that a modern award can only apply to employers that are constitutional corporations.

Flexibility of work (clause 20)

15. These matters should more properly be dealt with at the enterprise level than in a modern award.

Wages (clause 21 and 22)

16. No attempt has been made to combine the classification structures in clauses 21 and 22 to provide a single industry classification grouping.

17. The wages in clause 21.1 are taken solely from the Whitsundays Charter Boat Industry Interim Award – 2005. No consideration is given of the reduction in wages (mainly from a loss of penalty rates and overtime provisions) that employees previously covered by:
- a) the North Queensland Boating Operators Employers Award – State 2003; or
 - b) the Masters, Mates and Engineers’ Award, Motor Vessels 2500 B.H.P./1866 kW.B.P. and Under – State (Excluding the Port of Brisbane) 2003
- will experience other than rates being maintained for daily non-casual employees (clause 21.1(d)) until the award rate “catches up”.
18. We provide a comparison of some of the source award conditions at attachment “A”.
19. The rates of pay in clause 22.1 are sourced solely from the Marine Charter Vessels Award. Again no consideration is given to the other higher rates of pay identified above.

Hours of work – (clauses 27 and 28)

20. The concept of daily non-casual employment is further confused by the hours of work clause (clause 27). It provides that a daily non-casual employee’s ordinary hours must not exceed 20 days in any 28 day roster cycle. This is somewhat at odds with the requirements of the NES that ordinary hours be 38 per week and with the requirement for employees to work reasonable additional overtime. Such a provision should not be allowed in a modern award.
21. In relation to weekly employees and these provisions are based on the Marine Charter Vessels (State) Award with an expansion of the span of hours from 7am and 2am to 6am and 2am with a reduced minimum number of hours of work from 4 to 2.
22. The hours of work fail to consider to the terms and conditions of the North Queensland Boating Operators Award Employees Award – State 2003 or the Masters, Mates and Engineers’ Award, Motor Vessels 2500 B.H.P./1866 kW.B.P and Under – State (Excluding the Port of Brisbane) 2003. These awards provide that the ordinary hours shall not exceed 8 hours in any one day after which overtime is payable.

Meal Breaks (clause 29)

23. The clause is sourced from the Whitsundays Charter Boat Industry Interim Award – State 2005 Award. Both North Queensland Boating Operators Employers Award – State 2003 and Masters, Mates and Engineers’ Award, Motor Vessels 2500 B.H.P./1866 kW.B.P and Under – State (Excluding the Port of Brisbane) 2003 require that a meal break be granted within 6 hours after their ordinary starting time each day.

Overtime (clause 31)

24. The provision for daily non-casual employees states that they do not receive an entitlement to overtime unless they have completed more than 20 days in a 28 day cycle after which they are paid the rate of time and a half the daily rate. This is regardless of the number of hours worked in those 20 days. This provision is not an appropriate for a modern award and reflects the difficulties in the concept of daily non-casual employment.
25. In relation to weekly employment (clause 31.3) the overtime provision is for work in excess of 12 hours yet:
- a) the Marine Charter Vessels Award provides for overtime after 10 hours;
 - b) the North Queensland Boating Operators Employees Award – State 2003 after 8hours; and
 - c) the Masters, Mates and Engineers’ Award, Motor Vessels 2500 B.H.P./1866 kW.B.P and Under – State (Excluding the Port of Brisbane) 2003 after 8 hours..

Annual Leave (clause 32)

26. The conversion of annual leave entitlements into an hourly entitlement will cause difficulties in relation to daily non-casual employment as it is not based on hours of work.

Avoidance of physical exhaustion (clause 36)

27. These provisions fail to provide employees with a sufficient rest and lead to occupational health and safety concerns. At an international level vessels that proceed to sea (this

would include some of the vessels that would be covered by the Award) are required to comply with the STCW95 which relevantly provides:

- a) An uninterrupted rest period of 10 hours per day which may be split into two periods, one being not less than 6 hours;
- b) A minimum of 70 hours rest in a 7 day period;
- c) The minimum hours referred to above should not be interrupted as interpreted as implying that the other hours may be devoted to other duties. It is quite possible that in complying with the proposed clause 36 that these provisions will be well and truly exceeded.

Conclusion

28. The Award should not be made.

Dated: 17 April 2009



William Grant McNally solicitor for the
Maritime Union of Australian and the
Australian Institute of Marine & Power Engineers
By his employed solicitor Nathan Keats

Attachment "A"

	Whitsunday Charter Boat Industry Interim Award - State 2005	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane) 2003	North Queensland Boating Operators Employees Award - State 2003	Marine Charter Vessels Award
	AN140315	AN140165	AN140190	AN120330
Hours of work				
Span	no limitation	6am to 6pm Mon to Fri for vessels in port (cl 6.1.1)	no limitation	7am to 2am (cl 4(ii))
		pleasure cruises etc on trips not exceeding 24 hours 5:30am to 7:30pm (cl 6.1.3)		
		Shute shuttle to South Molle Fri 4pm to 12 midnight (s1.1(b))		
Max	no limitation		no limitation	12 hours per day
Ordinary hours	20 days in any 28 day roster cycle (cl 6.1.1)	8 hours per day, 40 pw unless trip does not exceed 24 hours then 5:30am to 7:30pm (cl 6.1.2)	• 8 hours per day • 5 days per week; 2 rostered days off to be consecutive wherever possible (cl 6.1.1)	40 hours per week Mon to Sat (cl 4(i))
Overtime				
Rate	time and one-half the daily rate (cl 6.5.1)	time and half for first 3 hours then double time; min 3 hours (cl 6.3.3 and 6.3.4)	time and half for first 3 hours then double time (cl 6.4)	time and half for first 2 hours then double time (cl 7)
Penalties				
Friday		Shute shuttle to South Molle after 12 midnight double time (s1.1(b))		
Saturday	nil	time and half for first 3 hours then double time (cl 6.1.4)	time and a half (cl 6.3.1)	
Sunday	nil	double time (cl 6.1.5)	time and a half (cl 6.3.1)	double time for captain cook cruises (cl 20)
Public holidays	nil	double time and a half; min 4 hours (cl 7.6.1)	double time and a half; min 4 hours (cl 7.6.1)	triple time on christmas day else double time min 4 hours (cl 8)

Attachment "A"

	Whitsunday Charter Boat Industry Interim Award - State 2005	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane) 2003	North Queensland Boating Operators Employees Award - State 2003	Marine Charter Vessels Award
Wages				
	Daily non casual rate			
Crew Level 1	\$ 107.82			
Crew Level 2	\$ 116.02			
Crew Level 3	\$ 123.28			
Dive Instructor/Dive Master	\$ 124.19			
Coxswain - Master of vessel less than 12m	\$ 135.10			
Master V - 12m to 24m vessel - 1st year increment	\$ 157.82			
Master V - Experienced or 2nd year increment	\$ 176.02			
Master IV	\$ 198.73			
	casuals daily rate			
Crew Level 1	134.78			
Crew Level 2	145.03			
Crew Level 3	154.1			
Dive Instructor/Dive Master	155.24			
Coxswain - Master of vessel less than 12m	168.88			
Master V - 12m to 24m vessel - 1st year increment	197.28			

Attachment "A"

	Whitsunday Charter Boat Industry Interim Award - State 2005	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane) 2003	North Queensland Boating Operators Employees Award - State 2003	Marine Charter Vessels Award
Master V - Experienced or 2nd year increment	220.03			
Master IV	248.41			
Engine Size		Mates Per Week \$		
35 BHP/26 kWBP and Under		-		
36 BHP/26.8 kWBP to 60 BHP/45kWBP		-		
61 BHP/45.5 kWBP to 170 BHP/127 kWBP		-		
171 BHP/127.5 kWBP to 480 BHP/360 kWBP		623.1		
481 BHP/360.5 kWBP to 800 BHP/597 kWBP		623.1		
801 BHP/598 kWBP to 1130 BHP/845 kWBP		623.1		
1131 BHP/845.5 kWBP to 1450 BHP/1083 kWBP		623.1		
1451 BHP/1084 kWBP to 1800 BHP/1345 kWBP		623.1		
1801 BHP/1345 kWBP to 2150 BHP/1606 kWBP		623.1		

Attachment "A"

	Whitsunday Charter Boat Industry Interim Award - State 2005	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane) 2003	North Queensland Boating Operators Employees Award - State 2003	Marine Charter Vessels Award
2151 BHP/1606 kWBP to 2500 BHP/1866 kWBP		623.1		
Engine Size		Masters/Engineers Per Week		
		\$		
35 BHP/26 kWBP and Under		607.5		
36 BHP/26.8 kWBP to 60 BHP/45kWBP		615.1		
61 BHP/45.5 kWBP to 170 BHP/127 kWBP		624.4		
171 BHP/127.5 kWBP to 480 BHP/360 kWBP		634.4		
481 BHP/360.5 kWBP to 800 BHP/597 kWBP		647.6		
801 BHP/598 kWBP to 1130 BHP/845 kWBP		659.7		
1131 BHP/845.5 kWBP to 1450 BHP/1083 kWBP		675.1		
1451 BHP/1084 kWBP to 1800 BHP/1345 kWBP		691.7		
1801 BHP/1345 kWBP to 2150 BHP/1606 kWBP		715.6		
2151 BHP/1606 kWBP to 2500 BHP/1866 kWBP		741.3		

Attachment "A"

086

	Whitsunday Charter Boat Industry Interim Award - State 2005	Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane) 2003	North Queensland Boating Operators Employees Award - State 2003	Marine Charter Vessels Award
Leading Hand			614.5	
Boating Attendant/Deckhand			603.6	
Host/Hostess			603.6	
				Per week
Master (vessels 35m and over)				749.6
Engineer (vessels 35m and over)				749.6
Master (vessels 20m and over)				677.1
Engineer (vessels 20m and over)				677.1
Master (vessels under 20m but 18.25m and over)				664.5
Engineer (vessels under 20m but 18.25m and over)				664.5
Master (vessels under 18.25m)				661
General - purpose Hand				602.9

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Ports, Harbours and Enclosed Water Vessels Award 2010

Table of Contents

Part 1—Application and Operation.....	3
1. Title	3
2. Commencement date	3
3. Definitions and interpretation.....	3
4. Coverage.....	3
5. Access to the award and the National Employment Standards	4
6. The National Employment Standards and this award	4
7. Award flexibility	4
Part 2—Consultation and Dispute Resolution.....	6
8. Consultation regarding major workplace change.....	6
9. Dispute resolution.....	6
Part 3—Types of Employment and Termination of Employment.....	7
10. Types of employment.....	7
11. Termination of employment.....	8
12. Redundancy	9
Part 4—Minimum Wages and Related Matters	10
13. Minimum wages	10
14. Allowances	11
15. Accident pay.....	17
16. Payment of wages.....	17
17. Superannuation.....	17
Part 5—Hours of Work and Related Matters.....	18
18. Ordinary hours of work and rostering	18
19. Breaks.....	19
20. Overtime and penalty rates.....	20
21. Shiftwork.....	20
Part 6—Leave and Public Holidays.....	21
22. Annual leave.....	21
23. Personal/carer’s leave and compassionate leave	21

Exposure Draft (May 2009): Ports, Harbours and Enclosed Water Vessels Award 2010

24. Community service leave.....21

25. Public holidays.....22

Schedule A—Classification Structure.....23

Part 1—Application and Operation

1. Title

This award is the *Ports, Harbours and Enclosed Water Vessels Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Workplace Relations Act 1996* (Cth)

Commission means the Australian Industrial Relations Commission or its successor

employee has the meaning in the Act

employer has the meaning in the Act

enterprise award has the meaning in the Act

enterprise NAPSA means a NAPSA derived from a State award which immediately prior to 27 March 2006 applied only to a single business or a part of a single business

NAPSA means notional agreement preserving a State award and has the meaning in the Act

NES means National Employment Standards

standard rate means the minimum weekly rate for a General Purpose Hand in clause 13

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

4.1 This award covers employers throughout Australia in the port, harbour and enclosed water vessels industry and their employees in the classifications listed in clause 13 to the exclusion of any other modern award. The award does not cover employers and employees wholly or substantially covered by the following awards:

(a) the *Maritime Offshore Oil and Gas Award 2010*;

(b) the *Seagoing Industry Award 2010*;

(c) the *Port Authorities Award 2010*;

Exposure Draft (May 2009): Ports, Harbours and Enclosed Water Vessels Award 2010

- (d) the *Dredging Industry Award 2010*;
- (e) the *Stevedoring Industry Award 2010*;
- (f) the *Marine Towage Award 2010*;
- (g) the *Marine Tourism and Charter Vessels Award 2010*; and
- (h) the *Sugar Industry Award 2010*.

For the purpose of clause 4.1, **ports, harbours and enclosed water vessels industry** means the operation of vessels of any type wholly or substantially within a port, harbour or other body of water within the Australian coastline.

- 4.2 The award does not cover an employee excluded from award coverage by the Act.
- 4.3 The award does not cover an employer bound by an enterprise award or enterprise NAPSA with respect to any employee who is covered by the enterprise award or enterprise NAPSA.
- 4.4 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The [NES](#) and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

- 7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:
 - (a) arrangements for when work is performed;
 - (b) overtime rates;
 - (c) penalty rates;

Exposure Draft (May 2009): Ports, Harbours and Enclosed Water Vessels Award 2010

- (d) allowances; and
 - (e) leave loading.
- 7.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress.
- 7.3** The agreement between the employer and the individual employee must:
 - (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
 - (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.
- 7.4** The agreement between the employer and the individual employee must also:
 - (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 7.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.6** Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 7.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 7.8** The agreement may be terminated:
 - (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the employer and the individual employee.
- 7.9** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

- 9.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

- 9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3** The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

10.1 General

- (a) Employees will be employed in one of the following categories:
- (i) full-time employees;
 - (ii) part-time employees; or
 - (iii) casual employees.
- (b) At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time or casual employees.

10.2 Full-time employment

An employer may employ an employee on a full-time basis of 38 hours per week.

10.3 Casual employment

- (a) A casual employee is an employee engaged as such.
- (b) A casual employee for working within the ordinary hours of work pursuant to clause 18 will be paid per hour for the work performed plus 25% loading which incorporates the casual employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shift allowances.
- (c) Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.

- (d) On each occasion a casual employee is required to attend work they are entitled to a minimum payment for three hours work.

10.4 Part-time employees

- (a) An employer may employ part-time employees in any classification in this award.
- (b) A part-time employee is an employee who:
 - (i) has reasonably predictable hours of work; and
 - (ii) receives on a pro rata basis equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (c) At the time of engagement the employer and the part-time employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.
- (d) Any agreed variation to the regular pattern of work will be recorded in writing.
- (e) An employee is required to roster a regular part-time employee for a minimum of two consecutive hours on any shift.
- (f) An employee who does not meet the definition of a regular part-time employee and who is not a full-time employee will be paid as a casual employee.
- (g) All time worked in excess of the hours as mutually arranged, excluding any additional hours, will be overtime.
- (h) A regular part-time employee employed under the provisions of this clause must be paid for ordinary hours worked on a pro rata basis of the full-time employee at the full-time employee rate.
- (i) All leave accruals and separation entitlements of part-time employees will be calculated and paid on a pro rata basis of the full-time employee at the fulltime rate of pay.
- (j) Where an employee and their employer agree in writing, part-time employment may be converted to full-time and vice-versa. If such an employee transfers from full-time to part-time (or vice-versa), all accrued award and legislative entitlements will be maintained. Following transfer to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to

give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

11.4 Return to place of engagement

If the employment of any employee is terminated by the employer elsewhere than at the place of engagement, for any reason other than misconduct, the employer will be responsible for conveying the employee to the place of engagement.

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a)** An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c)** This entitlement applies instead of clause 11.3.

12.5 Transitional provisions

- (a) Subject to clause 12.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:
- (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) This clause ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Minimum wages

13.1 The minimum rates for each classification will be:

Classification	Minimum weekly rate
	\$
Master	751.30
Mate	714.40
Engineer	714.40
General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Hostess, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand	674.70
Shipkeeper	616.30
Crane Driver (under 20 tonnes)	627.70
Crane Driver (over 20 tonnes)	693.80

13.2 The classification structure and definitions for the above classifications are contained in Schedule A—Classification Structure.

14. Allowances

14.1 Bedding and other utensils

- (a) When vessels are away during the night, the employer will supply a mattress, two blankets, two sheets, one pillow, one pillow slip, towel, soap eating utensils, washing cloths and drying towels. Laundering to be the responsibility of the employer.
- (b) On termination of employment an employee will be required to return to the employer all articles on issue to them.

14.2 Charge hands

- (a) Charge hands will be paid an allowance of 3.26% of the standard rate per week. Charge hands not directly supervised by a foreman in the allocation of duties to employees will be paid an allowance of 4.85% of the standard rate per week.

14.3 Distant work

- (a) A relieving employee other than a casual employee who is required to work at a place away from their normal place of work will be paid all additional fares involved and additional travelling time involved at the rate of single time; provided that no employee will be paid more than their ordinary day's wages for any time not exceeding 24 hours spent in travelling.
- (b) A relieving employee including a casual employee who is temporarily transferred to a locality to carry out relieving duties, where it is necessary to sleep away from their home, will be provided with reasonable board and lodging or paid an allowance of 56.23% of the standard rate per week of seven days. In the case of broken parts of a week, the allowance will be all living expenses actually and reasonably incurred but not exceeding the rate of 8.00% of the standard rate per day.

14.4 Dual capacity allowance

An employee who is a holder of a Certificate of Competency as a Marine Motor Engineer will be paid an allowance of 0.58% of the standard rate for each day or part of a day during which they are required to use such a certificate. The allowance prescribed by this subclause will, when paid, be deemed to be part of the ordinary rate of wages for the purpose of calculating overtime, annual leave, sick leave and long service leave.

14.5 Protective clothing

On request an employee will be supplied by the employer with an oilskin, "south wester", sea boots, overalls, gloves, hard hats, sunscreen lotion, safety glasses, safety shoes, sunglasses and ear protection devices for their own use when it is reasonably necessary to wear such protective clothing.

14.6 Uniforms

Where employees are required to wear uniforms, these will be provided by the employer at no cost to the employee or, instead thereof, the employer will pay to the

employee the sum 2.01% of the standard rate. Such uniform will be laundered by the employer.

14.7 Compensation for loss of personal effects

If in the course of employment an employee should sustain damage to or loss of their personal effects by fire, explosion, foundering, shipwreck, collision, stranding or accident and where such damage was not caused by the employee's own wilful neglect or fault or where such articles are lost through breaking or entering whilst securely stored at the employer's direction in a room or building on the employer's premises, vessel or work shop, the employer will compensate the employee to the extent of the damage or loss to a maximum of 210.30% of the standard rate.

14.8 Dirty work

- (a) An employee called upon to perform work which is more dirty or offensive than would normally apply will be paid an additional 0.07% of the standard rate per hour for the time spent on such work.
- (b) Provided that, instead of the above allowance, for all work an employee is required to perform alongside vessels in discharging alumina, petroleum, coke, sulphur, anhydrous ammonia and all phosphates, the employee will be paid an allowances of 0.18% of the standard rate per hour. Such employee will be eligible for this payment from the time the barge ties up to the vessel until the time it returns to its berth at the completion of the bunker.

14.9 Wet work

- (a) Any employee working in water or "wet places" will be paid an extra allowance of 0.03% of the standard rate per hour.
- (b) **Wet places** mean places where, in the performance of the work, the splashing of water or mud saturates the employee's clothing, or where protection is not provided to prevent splashing or drippings sufficient to saturate their clothing, and will include wet material or wet ground in which it is impracticable for the employee wearing ordinary working boots to work without getting wet feet. Provided this clause will not apply to employees working on natural surface made wet by rain.

14.10 Unloading and loading garbage allowance

An employee called upon to work at loading or unloading garbage and or ashes or other like material will be paid an allowance of 0.07% of the standard rate per hour.

14.11 Slipway etc. allowance

A junior employee called to work on slipways, cleaning, scraping, painting or overhauling launches, barges, punts or any other floating plant will be paid an allowance of 0.08% of the standard rate per hour.

14.12 Bilge allowance

An employee required to work in the bilges will be paid an allowance of 0.11% of the standard rate per hour.

14.13 Chipping hammers

Employees using electric or pneumatic chipping hammers, wire brushing machine and sandblasting machine will be paid at the rate of 0.01% of the standard rate per hour in addition to any other ordinary or overtime rate for the time so occupied. Where a chipping hammer is being used in a confined space, suitable ventilation will be installed, if practicable, before work commences.

14.14 Expenses

The employer will reimburse an employee any expenses reasonably incurred by them in the service or interest of the employer, provided the employee is able to prove such expense by way of receipts.

14.15 First aid

An employee on becoming qualified as the holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or its equivalent, and who is required by the employer to perform first aid duty will be paid an allowance of 1.70% of the standard rate per week.

14.16 Loading and discharge of cargo and supplies

An employee directed by the employer to load or discharge cargo including personal belongings of passengers, foodstuffs, beverages, or laundry, will be paid allowances as set out below when so engaged.

- (a) On vessels including barges and landing craft transporting passengers and cargo including fuel and or water and roll on/roll off cargoes between the mainland and island resorts:
 - (i) 2.99% of the standard rate per week of five working days; and
 - (ii) where an employee is so engaged in any week in excess of five days they will be paid an additional 0.61% of the standard rate per day.
- (b) On vessels (including barges and landing craft) transporting cargo only between the mainland and island resort(s) or between island resorts 5.23% of the standard rate per trip.
- (c) On vessels engaged in overnight cruises one to six nights 2.01% of the standard rate per trip.
- (d) On vessels engaged in overnight cruises over six nights 3.00% of the standard rate per trip.
- (e) Provided that:
 - (i) an additional amount will not be payable where the loading or discharge is restricted to ships stores, fuel and or water cargoes, incidental personal belongings of passengers, or other items required on board exclusively for a day cruise; and
 - (ii) an employee may be required to supervise the loading or discharge (including roll on/roll off cargoes) where such work is part of their normal duties, without additional payment.

14.17 Meal allowances

When an employee who is required to work overtime in excess of one and one-half hours after the usual ceasing time, without being notified the previous day, the employee will be provided with a suitable meal or be paid \$12.90 instead thereof. Should such overtime work continue for a further four hours, the employee will be provided with a second meal or be paid \$12.90.

14.18 Waiting orders

An employee who is required by their employer to telephone for orders will:

- (a) if an employee has a telephone installed at their home, be paid the annual rental of such telephone plus 16.51% of the standard rate for calls necessarily incurred by the employee for ringing for such orders. If the employee is required by their employer to have a phone installed, the installation fee will be paid by the employer; or
- (b) an off-duty employee required to ring for orders other than on a phone provided totally or in part by the employer, will receive as an allowance of 0.42% of the standard rate.

14.19 Tools

Where employees are required to provide and use their own tools the employer will be responsible for the replacement of such tools broken, worn out, lost or stolen in the course of employment.

14.20 Towing

- (a) Employees on any vessel either towing or carrying explosives will be paid an additional 0.29% of the standard rate for each day or part thereof while so engaged. This rate will be treated as part of the wages for all purposes of this award. For the purposes of this subclause, explosives means any material used as an explosive, such as gunpowder, blasting powder or materials, or any other material of like nature, but does not include petroleum products.
- (b) Masters engaged in towing non self-propelled bunker barges having a carrying capacity of 400 tonnes or more, will be paid an additional amount of 0.27% of the standard rate for each day or part thereof while so engaged. Provided that moving such bunker barges at terminal points is not regarded as towing within this provision. This rate will be treated as part of the wages for all purposes of this award.
- (c) Employees on vessels proceeding beyond the limits of a harbour, river or bay will whilst so engaged be paid their normal wage plus an allowance of 0.25% of their normal wage for each day with a minimum payment for four hours.

14.21 Ships stranded or wrecked or on fire

- (a) If a ship in the course of a voyage becomes wrecked or stranded and the employees are called on for special efforts while the ship is still wrecked or stranded they will, for the time during which they so assist, be paid 1.71% of the standard rate per hour.

Exposure Draft (May 2009): Ports, Harbours and Enclosed Water Vessels Award 2010

- (b) For the purposes of this clause a ship will be deemed to be wrecked if, while at sea, it is so disabled it becomes a dangerous crisis and unable for the time being to continue its voyage in the ordinary course of its operations.
- (c) Where a ship grounds in a tidal river or harbour and is refloated by ordinary means, with or without cargo, and without special work such as laying out anchors and handling hawsers being required of the employees, it will not be deemed to be wrecked or stranded within the meaning of clause 14.21(b).

14.22 Transport

- (a) Where an employee commences or finishes work or is required for call out between the hours of 11.00 pm and 6.00 am the employer will:
 - (i) supply them with a conveyance to or from their home whichever is appropriate;
 - (ii) pay them for time spent in reaching their home or travelling there from at the employee's minimum weekly rate with a minimum of half an hour and a maximum of one hour; or
 - (iii) if by arrangement with their employer the employee uses their own motor vehicle they will receive an allowance of not less than \$0.74 per kilometre.
- (b) An employee required to use their own vehicle to travel to or from a starting or finishing point other than their regular starting or finishing point will be paid for the distance and time in excess of the distance or time involved in getting to their normal starting or finishing point, \$0.74 per kilometre for the excess distance travelled and will be paid at their minimum weekly rate for the excess time occupied in travelling with a minimum of half an hour and a maximum of one hour.
- (c) An employee not required to use their own motor vehicle and should in the ordinary course of employment begin their work for the day at a particular place, is required to finish work at a place other than that particular place will be paid any reasonable travelling expenses and will also be paid at overtime rates of pay for any travelling time occasioned beyond their ordinary travelling time.

14.23 Travelling to another port

- (a) When an employee is required to travel from their home port to another port, time spent outside of their ordinary hours will be paid for as travelling time.
- (b) The rate of pay for travelling time will be ordinary rates, except on Sundays and holidays when it will be time and a half.
- (c) The maximum travelling time to be paid for will be eight hours on any one day.

14.24 Travelling expenses

Where an employee is required to join or leave a vessel at a place other than their place of engagement, they will be entitled to a free passage and to be reimbursed all out of pocket expenses reasonably incurred by them. The free passage if by rail will be first class and will include a sleeping berth when the train includes sleeping berth

accommodation. The free passage if by air is to be in commercial aircraft, first class if available.

14.25 Loading for duties outside normal work

An amount of 0.55% of the standard rate per day will be paid in excess of other wages and allowances to employees, for each day they are required to perform the duties of diving to clean glass bottom boats or to clear obstructions from boats propellers.

14.26 Living away from home

- (a) Whilst away from the vessel's home port, an employer will provide the employee with proper meals and accommodation and be responsible for payment of reasonable expenses actually incurred for such meals and accommodation ashore.
- (b) Whilst at sea, every employee will be provided with proper meals, attendance, bedding and soap, and be supplied once a week with clean bed linen and twice a week with clean towels. The employer will be responsible for the laundering of linen and towels.
- (c) Where it is the employer's responsibility to provide the employee with proper meals and accommodation ashore, and the employer fails to do so the employer will reimburse the employee for all costs incurred in relation to normal meals and charges incurred for a good standard of accommodation.
- (d) Tea, sugar, milk and coffee will be provided on all vessels for employees at the employer's expense.

14.27 Higher duties

An employee engaged for more than two hours during one day on duties carrying a higher rate than their ordinary classification will be paid the higher rate for such day. If engaged for two hours or less during one day they will be paid the higher rate for the time so worked.

14.28 Adjustment of expense related allowances

- (a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Vehicle and car allowance	Private motoring sub-group

15. Accident pay

15.1 Subject to clause 15.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

15.2 The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

15.3 This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.

15.4 This clause ceases to operate on 31 December 2014.

16. Payment of wages

Wages will be paid weekly or fortnightly. Wages may be paid by cash or electronic funds transfer (EFT).

17. Superannuation

17.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

17.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

17.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 17.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 17.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 17.3(a) or (b) was made.

17.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 17.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 17.2 and pay the amount authorised under clauses 17.3(a) or (b) to one of the following superannuation funds:

- (a) Maritime Super;
- (b) AMP Superannuation Savings Trust (MOST, AIMPE or MODIF); or
- (c) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

Part 5—Hours of Work and Related Matters

18. Ordinary hours of work and rostering

18.1 This clause supplements Division 2 of the NES which deals with maximum weekly hours.

18.2 Span of hours

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

18.3 Rostering

Rostered days off will be so arranged that in each week two of such days will be consecutive except where the employer and the employee agree otherwise.

18.4 Avoidance of physical exhaustion

- (a) An employee who has been on duty continuously, including meal breaks, for more than 18 hours will not be required by their employer to continue duty until they have had, for the purpose of rest, a period of 10 hours off duty.

- (b) Should an employee work at the request of the employer after they have been on duty continuously, including meal breaks for more than 18 hours, they will be entitled to be paid at the rate of double time for the period of such duty in addition to any other payment due to them until such time as the 10 hours' respite from duty commences.
- (c) Employees will receive their full weekly rate notwithstanding any rest period occurring in ordinary working hours.

19. Breaks

19.1 An employee will not be required to work for more than five hours without a break for a meal.

(a) Breakfast

The hour proceeding the usual starting time. The foregoing breakfast break will not be taken when employees are required to commence at 7.00 am or after, and proceeding the usual starting time.

- (i) By mutual agreement between the employer and employees concerned, a 20 minutes rest period may be taken without deduction of pay instead of the prescribed hour for breakfast. This rest period will commence 20 minutes before the usual starting time unless otherwise mutually agreed.
- (ii) Employees ordered in to dock or shift a vessel at 7.00 am will not be entitled to a meal break before noon, but if ordered in at any time before 7.00 am they will have an hour for breakfast not later than 8.00 am or a rest period of 20 minutes as provided above.

(b) Lunch

Noon to 12.45 pm or such period as is the usual custom of the establishment at which the employees are employed.

(c) Tea

5.00 pm to 6.00 pm or according to the usual custom of the establishment at which the employees are employed. Provided that by mutual agreement between the employer and employee concerned a rest period may be taken.

The times prescribed above may be altered by mutual agreement between the employer and employee concerned.

19.2 Double time will be paid for all work done during the breakfast, lunch and tea breaks specified above, such double time to continue until the employees are granted a meal break or are released from duty. This provision has no application to establishments or jobs where, in accordance with this clause, it is customary for paid rest periods to be taken instead of the breakfast and or tea breaks, and such rest periods are allowed and taken.

20. Overtime and penalty rates

20.1 Employees will be entitled to be paid:

- (a) a loading of 50% of the ordinary hourly base rate of pay for the first three hours, and 100% the ordinary hourly base rate of pay thereafter for any time worked outside of ordinary hours on a Monday to Friday, except for public holidays;
- (b) a loading of 50% of the ordinary hourly base rate of pay for all ordinary hours and overtime worked between midnight Friday and midnight Saturday; and
- (c) a minimum of four hours if recalled to work overtime after leaving the employer's premises.

20.2 Time off instead of overtime payment

- (a) An employee may elect, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer.
- (b) The employee may take one hour of time off for each hour of overtime, paid at the employee's ordinary hourly base rate of pay.

20.3 Shiftwork penalties

- (a) An employee whilst on early morning shift or afternoon shift will be paid a loading of 13.23% of the standard rate per hour.
- (b) An employee whilst on night shift will be paid a loading of 15.73% of the standard rate per hour.

20.4 Sunday work

An employee will be paid a loading of 100% of the ordinary hourly base rate of pay for any hours, ordinary and overtime, worked on a Sunday.

20.5 Public holidays

An employee will be paid a loading of 150% of the ordinary hourly base rate of pay, or any hours, ordinary and overtime, worked on a public holiday.

21. Shiftwork

21.1 The following shifts may be worked.

- (a) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight.
- (b) **Continuous work** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.
- (c) **Night shift** means any shift finishing subsequent to midnight and at or before 8.00 am.

- (d) **Permanent night shift** employee means an employee who:
- (i) during a period of engagement on shift, works night shift only;
 - (ii) remains on night shift for a period longer than four consecutive weeks; or
 - (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give them at least one third of their working time off night shift in each shift cycle will during such engagement period or cycle.

21.2 Shiftwork rates

Type of shift	Percentage of the ordinary time rate
	%
Afternoon shift	115
Night shift	115
Permanent night shift	130

Part 6—Leave and Public Holidays

22. Annual leave

22.1 The following provisions supplement the NES.

22.2 Annual leave loading

A loading of 17.5% (20% for shiftworkers) is payable in addition to the payment for the leave.

22.3 Shiftworkers

For the purpose of Division 5 of the NES a shiftworker is an employee employed on shiftwork where three shifts per day are worked over a period of seven days per week or an employee regularly rostered to work on Sundays and public holidays.

22.4 Requirement to take annual leave

Annual leave must be taken within six months of the entitlement accruing. An employer may require an employee to take a period of annual provided the employee is given at least 14 days notice.

23. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the NES.

24. Community service leave

Community service leave is provided for in the NES.

25. Public holidays

25.1 Public holidays are provided for in the NES.

25.2 An employee will be paid at the rate of double time and a half with a minimum of four hours work when required to work on a public holiday.

Schedule A—Classification Structure

A.1 Master

An employee whose duties require the holding of a Master certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.2 Mate

An employee whose duties require the holding of a Mate certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.3 Engineer

An employee whose duties require the holding of an Engineer certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.4 General Purpose Hand

An employee whose duties require the holding of a General Purpose Hand certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.5 Deckhand

An employee whose duties require the holding of a Deckhand certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.6 Greaser

An employee whose duties require the holding of a Greaser certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.7 Passenger Attendant

An employee whose duties require the holding of a Passenger Attendant certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.8 Turnstile Attendant

An employee whose duties require the holding of a Turnstile Attendant certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.9 Boating Attendant

An employee whose duties require the holding of a Boating Attendant certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.10 Fireman

An employee whose duties require the holding of a Fireman certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.11 Trimmer

An employee whose duties require the holding of a Trimmer certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.12 Linesman

An employee whose duties require the holding of a Linesman certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.13 Sailor

An employee whose duties require the holding of a Sailor certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.14 Able Seaman

An employee whose duties require the holding of an Able Seaman certificate of competency in accordance with Marine Orders-Part 3 or as recognised by the Australian Maritime Safety Authority or an equivalent authority of a Flag State or where relevant an equivalent State or Territory authority.

A.15 Cook

An employee whose duties require the holding of an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

A.16 Host/Hostess

An employee whose duties require the holding of an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

A.17 Crane Driver

An employee whose duties require the holding of an AQF III Certificate or equivalent certificate of competency of a relevant Australian Authority or an equivalent authority of a Flag State.

A.18 Shipkeeper

An employee on board a vessel in port and available for the performance of any duty.

AMOU 6

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Award Modernisation

Port and Harbour Service

(AM2008/49)

**Re: PORT HARBOURS AND ENCLOSED WATER VESSELS AWARD 2010
EXPOSURE DRAFT**

SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA

AND

THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS

1. We rely upon our earlier submissions lodged on 6 March 2009, and 18 March 2009.
2. We make the following additional submissions.

Coverage

3. We attached to the MUA/AIMPE submissions dated 6 March 2009 a draft Ports Harbour and Enclosed Water Vessels Award 2010 which was expressed to cover the Port, Harbour and Enclosed Water Vessels Industry. That industry was defined as meaning "employers engaged in or in connection with vessels." Vessel was broadly defined.
4. Upon reflection, we now realise that both the name for the award that we selected and the manner in which we defined the relevant industry, has failed to convey our real intention. That intention was to have created an award with coverage of the operation of all maritime vessels which were not covered by four other modern awards which we had sought. We sought separate coverage of the seagoing, dredging, maritime offshore oil and gas and the marine towage industries. Schedule 'A' to these submissions conveniently sets out the definitions of those industries as contained in the relevant exposure drafts. It

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also contains the definition of Marine Tourism and Charter Vessel Industry which is contained in the exposure draft of that industry. We had opposed the making of that separate award.

5. In the result the award contained in the exposure draft of the modern award in the industry addressed by these submissions has been confined to vessels operating within ports, harbours or other bodies of water within the Australian coastline.
6. The operators of vessels not covered by the four other awards that we sought will be award free once they proceed to sea. That is not consistent with the intention of the award modernisation process which is to have all industries covered by modern awards. The issue should be addressed by the Commission.
7. In order to remedy that defect, it is submitted that, the name of the modern award should be altered to **Maritime Industry (General) Award 2010** and the industries which the award covers should be “**the operation of any type of vessel used for navigating by water**”.
8. An amended sub-clause 4.1 of the exposure draft to give effect to this submission is as follows:

“**4.1** This award covers employers throughout Australia in the maritime industry and their employees in the classifications listed in clause 13 to the exclusion of any other modern award. The award does not cover employers and employees wholly or substantially covered by the following awards:

- (a) *the Maritime Offshore Oil and Gas Award 2010;*
- (b) *the Seagoing Industry Award 2010;*
- (c) *the Port Authorities Award 2010;*
- (d) *the Dredging Industry Award 2010;*
- (e) *the Stevedoring Industry Award 2010;* and
- (f) *the Marine Towing Award 2010;*

For the purpose of clause 4.1, **maritime industry** means the operation of any type of vessel used for navigating by water.”

Towing allowance

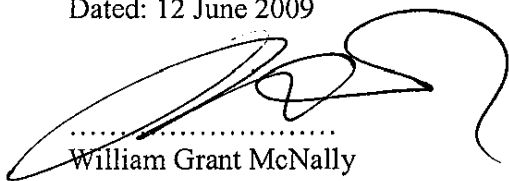
9. In clause 14.20(c) the relevant percentage should be 25% not 0.25%. This appears to be a typographical error for 25%. The source provision is found at clause 4.1.2 of Part 3 of the Port Services Award 1998 (AP 792489).

Classification Descriptors

10. We initially attempted to create classification descriptions by reference to the Marine Orders, the Navigation Act and relevant flagged state requirements. Two difficulties arise from this approach. Firstly the Marine Orders do not differentiate between all the classifications – for example between a second and third engineer. Secondly the Marine Orders essentially only set out qualification requirements. There is no impediment for an employer employing a person who holds a Chief Engineer’s certificate of competency as a third engineer. In those circumstances we are instructed to seek:

- a. Deletion of clause 13.2
- b. Deletion of schedule “A”

Dated: 12 June 2009



.....
William Grant McNally
Solicitor for the Maritime Union of Australian and
The Australian Institute of Marine and Power Engineers

.....
Nathan Keats

Schedule A

Seagoing Award 2010

maritime seagoing industry means the operation of vessels trading as cargo or passenger vessels which, in the course of such trade, proceed to sea (on voyages outside the limits of bays, harbours or rivers)

Dredge Industry Award 2010

dredging industry means:

- (a) the operation of vessels in dredging or sluicing work generally and including such work in relation to land reclamation, metalliferous and other mining, and oil and gas projects; and
- (b) the operation of vessels, barges, self-propelled dredges, tugs or other self-propelled vessels, used in the dredging of ports, harbours, bays, estuaries, rivers and channels requiring travelling to or from a dumping area, or whilst moving from port to port

Maritime Offshore Oil and Gas Industry Award 2010

maritime offshore oil and gas industry means the operation, utilisation, control, maintenance, repair, and service of vessels (as defined) in or in connection with offshore oil and gas operations

vessel means a propelled or non-propelled vessel that may, but is not limited, to be used in navigation, construction or drilling and includes a ship, barge, drilling vessel or rig, crane vessel, floating production facility, tug boat, support vessel, supply vessel, standby/emergency vessel, pipe laying vessel, diving support vessel, lighter or like vessels, or any other vessel used in offshore and gas operations

Marine Towage Award 2010

Marine towage industry means:

- (a) any work on tug boats, in conjunction with ship-assist operations and voyages, at or about, or to or from, a port in Australia (**harbour towage operations**);
- (b) movement of contract cargoes by combined tug and barge (up to a maximum of 10,000 tonnes) between different ports or locations in Australia (**tug and barge operations**).

Marine Tourism and Charter Vessels Award 2001

Marine Tourism and Charter Vessel Industry means the operation of vessels engaged wholly or principally as a tourist, sightseeing, sailing or cruise vessel and/or as a place of or for entertainment, functions, restaurant/food and beverage purposes engaged in the provision of water orientated tourism, leisure and/or recreational activities but does not include the operation of ferries engaged in regular scheduled passenger and/or commuter transport.

AMOU 7

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Award Modernisation

Maritime Industry

(AM2008/41)

Port and Harbour Services

(AM2008/49)

EXPOSURE DRAFTS

FURTHER SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA

AND

THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS

We respond the submissions filed by other interested parties as follows:

Seagoing Industry Award 2010

Australian Metals & Mines Association/Australian Ship Owners Association

1. The definition of Chief Integrated Rating as “includes a bosun” should be retained. As acknowledged in their submissions there are still vessels which employ a bosun for this classification of work. Until a situation is reached where there are no bosuns in the industry the definition should be retained.
2. The definition of Integrated Rating should be retained for the same reasons.
3. We support the submissions of AMMA/ASA in relation to the retention of the definition of “Day”.

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REF: WGM:NK:TM:811066

4. We reiterate our opposition to the creation of provisions for part-time employment. It is accepted by all, that part-time employment is not a current practice in the industry. The terms sought by AMMA/ASA are not appropriate as they provide for employees to work less hours per week on average than a full-time employee even though the employee has no capacity to return to shore for periods that exceed 4 weeks and are usually around about 8 or 9 weeks.
5. We support the position of AMMA/SAA that it is not necessary to include tradespersons classifications for the reasons set out in their submissions.

National Bulk Commodities Group Inc.

6. The National Bulk Commodities Group Inc complains that the modern award should only cover operators, employers and employees of ships licensed under the *Navigation Act 1912*.
7. We reiterate our earlier submissions that it is clear from clause 4A of the request from the Minister that employees who are covered by the *Fair Work Act 2009* are to be covered by a modern award. The scope of that Act will not be set until any regulations are made that can extend or reduce the jurisdiction of that Act (see section 31 to 35). This complaint is unfounded.
8. As to any concerns about current award conditions we remind the Commission that there is no ability in the award modernisation process to revisit the setting of conditions in an award that is being simplified by the Commission.

CSL Australia Pty Ltd

9. There is nothing new in the further submissions of CSL Australia Pty Ltd dated 15 June 2009.
10. We repeat paragraphs 6 and 7 to 24 of our submissions dated 16 April 2009. For completeness they were:
 6. We are not aware of CSL being the employer of any crew onboard a vessel to which this award would apply. We have undertaken a search of the Seacare Annual Report for 2007 to 2008. Appendix 4 of that report sets out a list of

employers covered by the scheme and is attachment “B” to our earlier submissions

8. In each case where CSL is listed as the operator, Inco Ships Pty Ltd is listed as the employer. Given status as an “employer” rather than as an “operator” is the relevant factor for determining coverage of the *Fair Work Act 2009* and in turn modern awards, the submissions of CSL should be given little weight. This is particular in the case when all employers and unions in the industry take a different view of the proposed award and the conditions that will apply to their employees.
9. For the sake of completeness we make the following comments on the supplementary submissions tendered by CSL at the public consultation.

Scope of the modern award

10. CSL complains that the proposed award will extend the modern award from its current coverage and that it should be narrowed to Australian registered vessels. The process of converting the constitutional basis of awards from the conciliation and arbitration power to the corporation power makes it inevitable that the scope of modern awards expands beyond that of MISA.
11. To date there has never been a lack of jurisdiction to make an award covering a foreign flagged vessel operating under permits. So much was confirmed by the High Court in *Re: Maritime Union of Australia; Ex Parte CSL Pacific* (2003) 200 ALR 39. The jurisdiction of the Fair work Act 2009 is yet to be confirmed as regulations are yet to be proclaimed (see sections 31 to 35). The fact that a particular application for an award was not granted by the Commission does not detract from the existence of jurisdiction.
12. It is also clear from clause 4A of the request from the Minister that employees who are covered by the Fair Work Act 2009 are to be covered by a modern award. CSL complaints are unfounded.

Establishment of minimum wage

13. In contrast to the submissions of CSL the components of the wage are correctly set out in attachment "A" (Clause 13.3)
14. When considering an aggregate wage the Commission has previously considered that an overtime component can be included. (See Print S9495, Ross VP *Masters and Deckhand Award 1992*) Indeed overtime components were left in MISA by Wilks C after it was converted into a minimum rates award.

Aggregate salary

15. It is notable that even CSL consider that aggregate salaries are apposite for the industry.
16. CSL's submissions fail to engage in the agreed position endorsed by the AIRC that the overtime factor is double time for all hours outside all ordinary time. It is now too late to reduce it to time and a half for the first three hours and double time thereafter with each day to stand alone. The reference to the decision of Justice Foster in May 1962 about the nature of overtime onboard a vessel without more fails to give any indication as to whether it reflects community or industry standards in 2009. For example just two years later in 1964 the Commission increased the rates for work on Saturdays and Sundays regulated by the Marine Engineers Awards 1962 to double time. (Print B1471 (1964) 108 CAR 965.)

Leave accrual

17. When the first attempt at assimilating the leave for a seamen to that of a shore worker was done the Commission in an arbitrated matter stated:

My approach has, following the decision of the Full Bench in its eight principles set out above, been to assimilate the seamen's leave to that of a shore worker who normally enjoys in a year 104 Saturdays and Sundays, together with public holidays (9 days) and annual leave (14 days). It is hoped and expected that the new approach will receive the sincere co-operation of both parties; if it does, it will succeed in its objective.

Because a seaman will get 123 days leave in a year (not after a year) he will now work 242 days. If as I expect, he will be able now to enjoy this leave, he cannot and should not expect to be also paid for it. (Print A6960 (1960)93 CAR 819 at 830.

18. That arbitrated decision was made at a time when standard hours were longer and public holidays and annual leave were less than they are today.
19. This methodology has not been disturbed since 1960. There is no reason to disturb it now.
20. Our draft explains the interaction of other types of leave and particular those under the Navigation Act 1912.

Classifications and Position Descriptions

21. We oppose the inclusion of the classifications of electrician, Ship fitter and Turner, Shipwright (carpenter), ship welder, ship metal fabricator (boilermaker), ship repairman, ship mechanic. These classifications are not part of the operational manning of a seagoing vessel and are not recognised by the Marine Orders.

Apprenticeships and Trainees

22. The inclusion of apprenticeship and trainee provisions as proposed is opposed. This industry has never been regulated by the National Training Wage Award 2000 or its predecessors.

Leave Entitlements – other components

23. Our draft clause 20 appropriately deals with other types of leave contained in the NES.

Redundancy

24. MISA currently only provides for redundancy in the case of the “decommissioning and sale off the coast of a vessel”. This is well below the

standard set in the NES. The redundancy provisions should be brought into line with the NES.

Port Harbours and Enclosed Water Vessels Award 2010

Australian Federation of Employers and Industries

25. The rates of pay and shift loadings have been sourced from current industrial instruments. In the circumstances that the request from the Minister requires that there be no reduction in terms and conditions of employees the rates of pay and conditions included in the Exposure Draft are appropriate. It is not appropriate that rates of pay disadvantage employees.

Marine Towing Award 2010

Ports Australia

26. We support the removal of the exclusion of the Port Authorities Award 2010.

Port Authorities Award 2010

Ports Australia

27. The fact that at least one port has employees that are entitled to the allowances set out in clause 14.2(c) and 14.3 warrants their retention.
28. We maintain our opposition to the inclusion of dredge personnel in this award. They most appropriately have their terms and conditions set by the Dredging Industry Award 2010.

APESMA

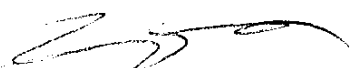
29. We support the submissions of APESMA that the salaries and classifications that should be included in the award are those from the Ports of Victoria Consolidated Administration Award 1998.

Port, Harbours and Enclosed Water Vessels Award 2010

Australian Services Union

30. We maintain our opposition to an exclusion of Local Government from the Port, Harbours and Enclosed Water Vessels Award 2010.

Dated: 16 June 2009



.....
William Grant McNally
Solicitor for the Maritime Union of Australian and
The Australian Institute of Marine and Power Engineers


.....
Nathan Keats



TRANSCRIPT OF PROCEEDINGS

Workplace Relations Act 1996

20479-1

**JUSTICE GIUDICE, PRESIDENT
VICE PRESIDENT LAWLER
VICE PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT HARRISON
SENIOR DEPUTY PRESIDENT ACTON
COMMISSIONER SMITH**

**AM2008/25, 26, 27, 28, 29, 30,31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,
44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63**

s.576E - Award modernisation

Sydney

10.17AM, TUESDAY, 30 JUNE 2009

Continued from 29/06/2009

**THE FOLLOWING PROCEEDINGS WERE CONDUCTED VIA
VIDEO CONFERENCE AND RECORDED IN SYDNEY**

Hearing continuing

PN3408

JUSTICE GIUDICE: The first industry that we will deal with is maritime and we will take appearances in relation to that industry.

PN3409

MR W MCNALLY: I appear on behalf of the Maritime Union Australia and the Australian Institute of Marine and Power Engineers. With me MR N KEATS.

PN3410

MR G HATCHER: I seek leave to appear with my learned friend MR SIQH for CSL Australia Pty Ltd.

PN3411

MR K BROTHERSON: I seek leave to appear for the National Bulk Commodities Group Incorporated.

PN3412

MR C PLATT: I appear on behalf of the Australian Mines and Metals Association and the Australian Ship Owners' Association.

PN3413

MR R WARREN: I appear by leave for the Australian Federation of Employers and Industries.

PN3414

JUSTICE GIUDICE: Thank you. Any other appearances?

PN3415

MS Z ANGUS: I appear on behalf of the Australian Workers' Union.

PN3416

JUSTICE GIUDICE: Thank you. Where leave is sought, it's granted. Now, we have a number of awards in this area. Has there been any discussion between the parties as to how to deal with these? Normally I think we would take them award by award.

PN3417

MR K HARVEY: Your Honour, Keith Harvey in Melbourne. We can see, but we can't hear anything in Melbourne. We're not sure what's happening.

PN3418

MR L MALONEY: Your Honour, from Brisbane, I have the same problem. We can see, but can't hear.

PN3419

JUSTICE GIUDICE: Can you hear now?

PN3420

MR HARVEY: We can in Melbourne, yes, your Honour.

PN3421

JUSTICE GIUDICE: Can you hear us, Mr Maloney?

PN3422

MR MALONEY: I can now, your Honour. Thank you.

PN3423

JUSTICE GIUDICE: Very well. Who are you appearing for, Mr Maloney?

PN3424

MR L MALONEY: I appear on behalf of the Whitsunday Charter Boat Industry Association and the Association of Marine Park Tourism Operators for Livingstones Australia in matter AM2008/59. That's the tourism matter.

PN3425

JUSTICE GIUDICE: We haven't got to that yet. We're dealing with maritime at the moment, but we should get to tourism some time today.

PN3426

MR MALONEY: Thank you. Yes.

PN3427

JUSTICE GIUDICE: Mr Harvey, can you hear us?

PN3428

MR HARVEY: Sorry, your Honour, I can hear you, but I forgot to take mute off at this end. Your Honour, I appear on behalf of the Australian Services Union with regard to the maritime industry matter. The ASU filed a late submission in this matter yesterday which has been listed on the Commission's website which when it comes to my turn I will explain to the Commission the reason for it. If the Commission pleases.

PN3429

JUSTICE GIUDICE: Yes, and Ms Oppy, are you appearing in this matter?

PN3430

MS OPPY: No, your Honour, funnily enough not this matter, but I will be in the last one.

PN3431

JUSTICE GIUDICE: Very well.

PN3432

MR WOODS: I appear on behalf of Ports Australia in respect of this area, in respect to dredging only.

PN3433

JUSTICE GIUDICE: I am sorry, Mr Woods was it?

PN3434

MR WOODS: Yes.

PN3435

JUSTICE GIUDICE: Thank you. Are there any other appearances? Very well, as I was saying, it's a question of how we deal with this. Has there been any discussion about the order or the manner in which we should deal with these exposure drafts? Mr Hatcher?

PN3436

MR HATCHER: Yes, if it please the Commission, the Commission will have received some correspondence from our client. We would wish to move for an adjournment in relation to the Maritime Industry Seagoing Award 2008/41 and it

would seem convenient if that could be dealt with first subject to any other parties' views.

PN3437

JUSTICE GIUDICE: Yes. Well, do the other parties have notice of this?

PN3438

MR PLATT:

PN3439

MR WOODS: AMMA and ASA would support the proposition for an adjournment, your Honour.

PN3440

JUSTICE GIUDICE: Yes. Well, we will hear you on it, Mr Hatcher.

PN3441

MR HATCHER: May it please the Commission, the Commission will have received the correspondence that our clients received from the Minister's office. The correspondence indicates an intention or foreshadows an intention by the Minister to extend the operation of the Fair Work Act.

PN3442

JUSTICE GIUDICE: Mr Hatcher, I am not quite sure what you meant when you said the Commission would have received it.

PN3443

MR HATCHER: The letter that our client received from the Minister was attached to the correspondence.

PN3444

JUSTICE GIUDICE: Yes, that's right. We received it from you?

PN3445

MR HATCHER: That's so, yes. I'm sorry, your Honour.

PN3446

JUSTICE GIUDICE: It's all right. I'm just making sure there wasn't some other communication that you were referring to.

PN3447

MR HATCHER: No. It may be appropriate if I formally tender - - -

PN3448

JUSTICE GIUDICE: We haven't been marking these documents. There are too many of them, but we will ensure that these documents go onto the website and are part of the proceedings.

PN3449

MR HATCHER: Thank you, your Honour.

PN3450

JUSTICE GIUDICE: In fact, already on the website, I suspect.

PN3451

MR HATCHER: If I can briefly summarise and hopefully not do an injustice to the Minister's correspondence, the Minister indicates an intention to extend the

operation of Fair Work Australia, presumably some time after that legislation comes in to force, to cover permit and licensed vessels wherever and however they may be operated within the economic zone of Australia.

PN3452

The award modernisation proposal seems to have gone forward upon an assumption that the Act presently extends that far. Presumably the Minister has a different view and sees the necessity to extend the operation or perhaps there are other classes of vessels that it's thought the Act presently doesn't extend to and it's sought to extend to.

PN3453

More importantly perhaps for present purposes the Minister foreshadows an intention and I say foreshadows an intention because we had rather thought the way it was foreshadowed that it may have actually come to fruition by today to amend the award modernisation Request of the Commission in relation to the Maritime Industry Seagoing Award so that it might distinguish the situation of permit vessels, that is appropriate conditions for permit vessels might be separately determined.

PN3454

At least that's as we understand the Minister's intention both from the correspondence and from discussions that have been had with our client. Now, the Commission will have seen from our submission in relation to the exposure draft that whilst there are a number of general submissions, there are a number of very specific submissions directed to the conditions that apply on permit vessels, drawing particularly upon decisions of the Commission, that is the Australian Industrial Relations Commission, dealing with the conditions that might prospectively apply on those vessels.

PN3455

Given that the Minister has foreshadowed an intention to amend the Request to deal particularly with conditions on those vessels and given the historical situation of the operation of the Maritime Industry Seagoing Award, the fact that the award has as we apprehend it no direct application to any employers at the moment, in our respectful submission it would be the appropriate step to see exactly what the Minister envisages the Commission will be asked to do in terms of reviewing conditions to apply to permit vessels, how that Request might impact upon the present Request in relation to the maritime industry more generally and allow the parties to consider the way in which the two proceedings might go forward.

PN3456

We had been told and I should say that the Minister intended appearing today to inform the Commission of the amended award modernisation Request. I don't know whether there's been some miscommunication, some misunderstanding or some delay in the appearance, but that was certainly the information we were provided with. That is in short the basis for the application for adjournment. I've taken the opportunity of raising the matter with my learned friend, Mr Keats, and whilst I don't think the application for adjournment is supported and I wouldn't suggest that Mr Keats would go close to that, I don't know that he wishes to be heard in opposition.

PN3457

That's my understanding of the position, but I will allow him to speak for himself, obviously. If the adjournment is opposed, then I would seek to rather embellish the submissions, but that's the substance of the application for adjournment and to the extent that there's no direct opposition, in our respectful submission there's sufficient material for the Commission to accede to it.

PN3458

JUSTICE GIUDICE: Any other views about this application?

PN3459

MR WOODS: Your Honour, my client would support the submissions made by Mr Hatcher on behalf of his client.

PN3460

MR PLATT: We support the application.

PN3461

JUSTICE GIUDICE: Yes. No other views? Mr McNally?

PN3462

MR MCNALLY: The Maritime Union and the Institute regard it as a matter for the Commission. We are concerned that the direction may take some weeks.

PN3463

JUSTICE GIUDICE: Mr Hatcher, I suppose the question that poses itself is why could not the award be progressed, leaving the question of conditions on licensed and permit ships to be dealt with in due course?

PN3464

MR HATCHER: Well, your Honour, if the award had direct application to a known body of vessels, that would clearly be an attractive course, but at this stage the very basis of licences and permits are under review as we understand it. That may or may not be clarified in the way the Minister approaches this. That's in the province of another Minister. The award presently as Commissioner Raffaelli found in earlier proceedings has no direct application to any employers by reason of agreements being in place and so forth.

PN3465

JUSTICE GIUDICE: That is so in many areas.

PN3466

MR HATCHER: Well, our submission would be that this is a rather unusual circumstances in this industry.

PN3467

JUSTICE GIUDICE: Well, it's the maritime industry. Yes, well, we will have to consider it, Mr Hatcher. What we might do, Mr Hatcher, is just reserve our ruling on that, but we will deal with the other awards first and presumably the people who are here for the Seagoing Award will be happy to stay a little bit longer until they get the answer. We want to confer about the matter, but we don't think it's worth adjourning at this stage, but we will deal with it during the morning.

PN3468

MR HATCHER: May it please. If we could then withdraw perhaps while the Commission deals with those other matters?

PN3469

JUSTICE GIUDICE: You don't have any interest in the other matters?

PN3470

MR HATCHER: No.

PN3471

MR BROTHERTON: Nor do I, your Honour.

PN3472

JUSTICE GIUDICE: I think the easiest course might be if we adjourn straight away and we will give you a response.

<SHORT ADJOURNMENT

[10.31AM]

<RESUMED

[10.35AM]

PN3473

JUSTICE GIUDICE: Mr Hatcher, we have decided to grant the adjournment. We're obviously concerned about the overall timetable and the potential jeopardy to the completion of the modernisation of this area but it seems that there's not much that we can do at this stage until the Request is amended, as it has been indicated it will be.

PN3474

MR HATCHER: Yes.

PN3475

JUSTICE GIUDICE: So what we intend to do is to issue some directions once the Amended Request and those directions will deal with the manner in which the modernisation of this area can be dealt with, consistent with the timetable we have already announced.

PN3476

MR HATCHER: I think we will be on notice, your Honour, that our client ought to have its skates on, your Honours.

PN3477

JUSTICE GIUDICE: Yes. Well, as I say, we'd like to maintain the timetable.

PN3478

MR HATCHER: Yes.

PN3479

JUSTICE GIUDICE: Very well. We shall move to the Dredging Industry Award. Who would like to commence?

PN3480

MR W MCNALLY: I will volunteer, your Honour.

PN3481

JUSTICE GIUDICE: Yes, Mr McNally.

PN3482

MR MCNALLY: What the unions did, that's the Maritime Union and the institute did, in each of the awards with which they're concerned today was to file a submission and then to file a further submission in reply to those submissions

that have been filed by other parties. We rely upon those submissions and have little to say to add to that. In the dredging industry at 123 of the statement of the Commission dealing with the dredging industry on 22 May, at paragraph 23 the Commission raised concern as to the inclusion of the average weekly wage. We've addressed that in our submission.

PN3483

At paragraph 124 the Commission raised concern as to the meaning of remote and less remote. We've addressed that in our written submission and we've raised a difficulty that we found in all the Maritime Awards and indeed the Port Services Award where we have endeavoured to define the classifications by reference to qualifications that were necessary to perform certain functions. We came to a dead end on that in a number of respects, not the least of which was firstly that people were performing functions below their qualifications under the award. We had to recognise that and some of the qualification descriptors didn't adequately address the concerns.

PN3484

So what we have done in all the awards including the Dredging Award is to abandon that attempt, delete schedule A and proceed with the descriptions of the classifications as they are contained in mostly clause 13. There's other less significant matters raised in the written submissions we've put in and we rely upon those, if the Commission pleases.

PN3485

JUSTICE GIUDICE: Thanks, Mr McNally. Yes, Ms Angus.

PN3486

MS Z ANGUS: Yours Honours and Commissioner, there's two primary awards that form the basis of the modern Dredging Award, the AWU Dredging and the Maritime Dredging Awards. Aside from the classification structure in both of those awards they are almost word for word identical so in this industry the award modernisation process has been largely uncontroversial. The Commission's exposure draft reflects the position advanced by both the AWU and the MUA in the filed draft and we are for that reason content with the draft in all respects bar one.

PN3487

The parties didn't seek to insert a part timer's clause for provision for part time employment in the award on the basis largely that it's not current practice in the industry and a part time employment clause has been inserted by the Commission but it is not the standard part time employment clause. In our submission if the Commission is inclined to insert the provision for part time employment in the award and we'd certainly live with that, then it should be the terms and conditions appropriate for part timers in this industry should be consistent with the majority provisions, the majority terms and conditions for part timers in the modern awards that the Full Bench issue.

PN3488

So in our submission the only concern we have with the Dredging Award is that the provisions covering part time should reflect the standard terms and conditions for part time as across the awards. If it pleases the Commission.

PN3489

JUSTICE GIUDICE: Thank you, Ms Angus.

PN3490

MR A WOODS: Yes, your Honour, just in relation to the coverage, Mr McNally on behalf of his clients raised in the submission that it's directed more in terms of the Port Authorities Award a proposition that the employers and employees covered by that award should not be included in the exclusion in 4.2 of the Dredging Industry Award. We maintain the exclusion should stand. The practical position in respect of dredging in the port authority industry is that there are at the moment two ports that undertake that. One of those is the Port of Brisbane to which Mr McNally refers in his submission.

PN3491

The Port of Brisbane is a NAPSA enterprise award so it would fall within that exclusion in any event and the other dredge is operated by the Port of Newcastle which is covered by the New South Wales Ports Corporation Award and has general application and there's no particular provisions in that award that single out dredge operating staff for many other staff and they are dealt with as port officers. So when approaching the principle in terms of drafting the Port Authorities Award we maintain that approach should be consistently followed and would maintain the exclusion that's contained in the Dredging Industry Award.

PN3492

JUSTICE GIUDICE: Thank you. Any other submissions in relation to dredging? Very well. We shall now deal with the maritime offshore oil and gas draft. Yes, Ms Angus, thank you, are there any submissions in relation to that draft? Mr McNally?

PN3493

MR MCNALLY: The Maritime Union and the Australian Institute of Marine Power Engineers filed written submissions on 12 June dealing with the Maritime Offshore Industry Oil and Gas Award. The principal feature of that written submission was that we abandon our search to define classifications by reference to qualifications and the reasons for that are set out in the submissions and there are more minor matters raised in the written submissions and we rely upon those submissions, if the Commission pleases.

PN3494

JUSTICE GIUDICE: Thanks, Mr McNally. Yes.

PN3495

MR C PLATT: If your Honour pleases, in relation to the submission by the CEPU concerning award coverage we would say that it's not necessary to exert a change to the scope clause as a result of clause 4.3 which obviously deals with the interaction of awards. The Full Bench made some comments in relation to embedded employers I think in its decision on 22 May and the CEPU's position has been replicated in a number of awards including the modern Mining Industry Award and in respect of submissions in relation to the Hydrocarbons Award we would say that it's quite clear that where the employer is engaged in the industry, in this case of that covered by the Maritime Offshore Oil and Gas Award, then persons who perform electrical duties that are covered in the classification structure would quite clearly be working under this award.

PN3496

Obviously someone who is coming on in a true contractor arrangement for a short duration and are not working in this industry would be covered by the Electrical Contracting Award or its modern equivalent. So we would say that as a consequence there's no need to insert the provisions to which the CEPU propose and a similar response in relation to the Australian Industry Group proposal in respect of its award. If the Commission pleases.

PN3497

JUSTICE GIUDICE: Thank you. Are there any other submissions?

PN3498

MR K HARVEY: I have a final submission about maritime if everybody else has completed theirs on those particular awards.

PN3499

JUSTICE GIUDICE: Yes, Mr Harvey.

PN3500

MR HARVEY: Yes, thank you, your Honour. Your Honour, with regard to the maritime industry as such the ASU did not make a written submission with regard to any of the proposed published maritime exposure draft awards and we have no submissions to make about those. They don't propose to cover any employees who are members or eligible to be members of the Australian Services Union. However, your Honours and Commissioner, the ASU did file a late submission yesterday which is on the Commission's website in the context of this industry regarding the position of shipping clerks, that is, employees currently covered under the Clerical Industry Shipping Officers Award 2003.

PN3501

Your Honours and Commissioner Smith may be aware that this matter was alluded to on a number of times in this process of award modernisation in stage 3 in the public consultations and in the written submissions. The ASU, your Honours and Commissioner, could have filed the submission also under the ports and harbours industry sector and in fact the union's exposure draft submissions re ports and harbours filed on 12 June do refer to this issue. But having examined the list of respondents to the Clerical Industry Shipping Officers Award 2003 I think it may also be appropriate to refer to this matter here and that's the reason why we have filed this late submission.

PN3502

As I said, your Honours and Commissioner, this issue is a question or the issue of the appropriate modern award coverage of clerks currently employed under that Clerical Officers Award, there are so far as we're aware by participating and reading all the submissions, there are no proposals to include those employees under any award in the maritime or ports and harbours or any related industry award. It therefore appears to the ASU that it is likely that those employees will eventually be covered by the modern Clerks Award made in the priority stage.

PN3503

If this is the case, your Honours and Commissioner, the ASU submits that the modern Clerks Award will need to be varied to provide certain terms and conditions of employment particular to shipping officers and currently provided for under the Shipping Officers Award and those terms and conditions are detailed

in the schedule attached to the ASU's further submission filed yesterday and they are provisions taken directly without any editorialising from the Clerical Industry Shipping Officers Award 2003. Your Honours and Commissioner, you may recall that an analogous position arose last week in these public consultations in the context of the oil and gas industry regarding oil and gas - sorry, oil industry clerks and on the following day with regard to the travel industry. In the first of those proceedings the ASU submitted that if all clerks were not to be included in the Oil Industry Award as we are actually submitting, then there were two alternative possibilities to that, firstly that a modern Oil Clerks Award could be made or alternatively if these clerks were eventually to be covered by the Clerks Private Sector Award that amendments would need to be made to that award to maintain the existing safety net for those employees.

PN3504

And a similar situation arose the following day with regard to the travel industry, particularly the travel agents industry and on that occasion the ASU had proposed a modern Travel Agencies Award be made, but there was no exposure draft issued on that and the Full Bench indicated that it was unlikely to make such an award and suggested that employees in that industry be covered by another award, either the Clerks Modern Award or the Retail Industry Award.

PN3505

Your Honour, the president, may recall that I asked for some guidance as to how these matters would be dealt with if the Clerks Modern Award were to eventually apply to employees in the travel industry and we were advised verbally that we needed to deal with these matters as we went through and not at a later date, so that's the reason for the late submission with regard to the maritime industry and particularly the shipping clerks, your Honours and Commissioner, and as I said we've prepared a schedule attached to yesterday's submission which we submit should be added to the Clerks Private Sector Award to maintain the terms and conditions of employment for shipping officers.

PN3506

I should advise, I think, your Honours and Commissioner, that the ASU has also prepared similar schedules with regard to employees currently covered under the Clerks Breweries Award with regard to the liquor manufacturing industry which is scheduled for hearing tomorrow and the private transport industry other sectors scheduled for Thursday. That, of course, is in addition to oil clerks and travel industry clerks that I've just mentioned.

PN3507

Now, your Honours and Commissioner, we submit that this course of action has become necessary as a result of the original decision of the Full Bench that appropriate coverage of clerical and administrative employees would need to be considered on an industry by industry basis and therefore we have not been in a position to determine or to know until each industry sector is covered where the coverage of clerical and administrative employees will end up at the end of the award modernisation process.

PN3508

I should say just for the sake of completeness that we would also submit, your Honours and Commissioner, that this is not a matter which deals with transitional

issues and shouldn't be confused with that. As we understand it, transitional issues relate to in particular state and territory differentials arising from NAPSAs and that's the way in which transitional provisions in for example the Modern Clerks Award are dealt with, but these matters are not transitional in that sense because the awards that we're talking about are pre-reform federal awards of this Commission which operate on a national basis and therefore are not covered by those sort of transitional arrangements.

PN3509

So that's the reason for the late additional submission, your Honour, and for the further additional submissions that I've foreshadowed, but contemplating this further, your Honours and Commissioner, particularly in the light of the Full Bench statement last Friday regarding applications to amend modern awards that have already been determined by the Commission, it appears to us, your Honours and Commissioner Smith, that an alternative approach to the course of action that we've adopted in this stage three proceedings is that it may be considered.

PN3510

I think it's correct that what we're suggesting are amendments to the Clerks Private Sector Award and the Commission may find it preferable to deal with all such proposals to vary via an application to vary that award by the ASU to achieve the final determination of coverage, both coverage of that award and the terms and conditions to apply in particular sectors at a particular time, but in order to ensure that the Commission is aware and the other parties are aware of what we propose in this area, we determined that it was incumbent on us to file these additional submissions and indicate what we considered, what we saw as the issue that has arisen, particularly in stage three as the final outcome of award coverage for clerical employees in certain industries and industry sectors is determined. Those are our submissions in this matter, your Honour, but I am obviously happy to answer any questions that the Bench may have. If the Commission pleases.

PN3511

JUSTICE GIUDICE: Did the ASU participate in the consultations before the drafting?

PN3512

MR HARVEY: Yes, your Honour, we did and some of these matters were canvassed, your Honour, and that's reflected and, in fact, we quoted from the transcript of those hearings in our submission that we filed with regard to the exposure draft with regard to port and harbour services and we flagged at that stage that the terms and conditions relating to shipping officers under that Clerical Industry Shipping Officers Award would need to be determined as part of this process and that's in our submissions which I was going to refer to later today, your Honour.

PN3513

JUSTICE GIUDICE: Well, the difficulty that presents itself is that the ASU has now put forward a proposal in relation to coverage of clerks in the industry late in the consultation process which might be said other parties haven't had an adequate opportunity to consider.

PN3514

MR HARVEY: Yes, your Honour, and we do appreciate that that's a criticism of what has occurred, but we would also submit, your Honour, I mean, we're happy to take our share of the responsibility for that, but we also say that it's a natural outcome of the process that has been taken with regard to the coverage of clerical and administrative employees generally. For example, your Honour, if I go back to the oil industry and I don't want to re-argue that matter, but we still don't know until the final award is made with regard to the oil industry as to whether clerical employees are to be covered by the industry award or not and we won't know that until the Commission publishes its final decision on the form of the Oil Refineries and Manufacturing Award, so we are a little betwixt and between, your Honour, and that's why we have also submitted an alternative proposition so that everybody can be on notice if necessary for us to file a submission, an application to vary the Clerks Modern Award to if you like mop up or pick up those areas of coverage which we find in retrospect are now being covered by the Clerks Modern Award which we certainly didn't know in the priority stage.

PN3515

JUSTICE GIUDICE: Yes. Well, is it your position or the union's position, Mr Harvey, that it places a high priority on having an occupational clerical award, but where there are industry provisions for clerks that are more beneficial, you wish to retain those?

PN3516

MR HARVEY: Yes, your Honour, particularly where they're found in existing pre-reform awards and we say that's appropriate for two reasons, your Honour, and one of the reasons - - -

PN3517

JUSTICE GIUDICE: I am not asking you whether it's appropriate or not. I am just asking if that's your position.

PN3518

MR HARVEY: Yes, your Honour.

PN3519

JUSTICE GIUDICE: All right. It may be as you say that there will have to be some later step in the process to deal with clerical coverage in some of these areas, but in any event, thank you for your submission and we will consider it.

PN3520

MR HARVEY: Thank you, your Honour.

PN3521

JUSTICE GIUDICE: Yes.

PN3522

MR PLATT: I notice that Mr Nucifora appeared for the ASU at the consultation hearings and the bulk of that discussion was to the effect that there wasn't any clerical classifications in the relevant awards and that there was an interest in relation to the dredging award. The submission in relation to the shipping industry as we've found out has only been made yesterday, so we've only been able to search it this morning, but I note that most of the shipping industry

representatives, apart from AMMA and ASA, aren't present to hear the submissions.

PN3523

JUSTICE GIUDICE: Yes.

PN3524

MR PLATT: We having had a brief look at the appendix of the submission, there's some areas there where there would be some challenge and certainly a need for some discussion and I would suggest that in the interests of procedural fairness, the balance in the industry ought to be able to be given time to consider this proposal.

PN3525

JUSTICE GIUDICE: Yes. Any other submissions? Very well, does that conclude the matters in relation to offshore oil and gas? Very well, I think we should then, if there are no other matters for maritime, I think we should move to tourism and I will take appearances in the tourism industry matter.

PN3526

MR W MCNALLY: I appear for the Australian Institute of Marine and Power Engineers with MR KEATS.

PN3527

MR J RYAN: I appear for the Shop, Distributive and Allied Employees Association.

PN3528

MR M HARMER: I appear on behalf of the Ski Areas Association.

PN3529

JUSTICE GIUDICE: Ski Areas Association?

PN3530

MR HARMER: Yes.

PN3531

MR W ASH: I appear on behalf of the LHMU.

PN3532

MR R WARREN: I seek leave to appear for the Australian Federation of Employers and Industries.

PN3533

JUSTICE GIUDICE: Thank you. Any other appearances?

PN3534

MS Z ANGUS: I appear on behalf of the Australian Workers' Union.

PN3535

MR K HARVEY: I appear on behalf of the Australian Services Union.

PN3536

MR L MALONEY: I appear on behalf of the Whitsunday Charter Boat Industry Association and the Association of Marine Park Tourism Operators in relation to 2008/59.

PN3537

JUSTICE GIUDICE: Thank you. We will deal with the Marine Tourism and Charter Vessels Award first. Yes, Mr McNally.

PN3538

MR MCNALLY: This industry is involved in the port services collection of awards in this way. What the maritime and the institute have proposed is that there be a Maritime Industry General Award which will cover vessels and we'll have more to say about this when we get to it, vessels that aren't covered by other awards and we've proposed that the Maritime Industry Tourist Award not be made and that it be contained, that the terms and conditions of employment in respect of tourism be dealt with by the Maritime Industry General Award. We did file a substantial submission on 18 June in which we responded to the submissions that were made by the various representatives of the industry that proposed the making of a separate award.

PN3539

JUSTICE GIUDICE: Mr McNally, would it be appropriate if we also took appearances in relation to the port and harbour services area, given the cross-over here? There may be parties who want to comment on the submissions.

PN3540

MR MCNALLY: Either that or defer this to - because this will take longer than the other awards, I know Mr Morris has something to say. We could probably dispose of everything in the matter for 20 minutes, just leaving this matter, if the Commission pleases.

PN3541

JUSTICE GIUDICE: Yes.



PN3542

MR MCNALLY: We haven't dealt with the Towage Award, the Stevedoring Award, the Port Authorities Award. They should be substantially short.

PN3543

JUSTICE GIUDICE: Yes. I think you can continue with your submissions, but before you do I will just take appearances in the other matter so that anybody who wants to comment on them now or later can do so, so I will take the appearances in the port and harbour services.

PN3544

MR A MORRIS: I appear on behalf of the Maritime Towage Employer Group and the Coal Terminals Group.

PN3545

MS J GRAY: I appear on behalf of the CFMEU Mining and Energy Division.

PN3546

MR R WARREN: Your Honour, I also will be appearing in that matter and make submissions in connection with the Ports, Harbours and Enclosed Water Vessels Exposure Draft Award.

PN3547

MR A HERBERT: I seek leave to appear on behalf of Gladstone Port Corporation in relation to the Port Authorities Award.

PN3548

MR A WOODS: I seek leave to appear on behalf of Ports Australia with MR ANDERSON in respect to the Ports Authorities Award.

PN3549

MS Z ANGUS: I appear on behalf of the AWU in the Coal Terminals Award.

PN3550

MR K HARVEY: I appear on behalf of the ASU with regard to ports and harbours.

PN3551

MS C OPPY: I seek leave to appear on behalf of Westscheme Pty Ltd.

PN3552

JUSTICE GIUDICE: Thank you. Mr Maloney, do you have any separate interest in this area?

PN3553

MR MALONEY: No, your Honour, we don't. Thank you.

PN3554

JUSTICE GIUDICE: All right, Mr McNally, if you could resume. Thank you.

PN3555

MR MCNALLY: In the Ports, Harbours and Enclosed Water Vessels Award we had proposed an industry as meaning employees engaged in or in connection with vessels and we widely define vessels. We finished up with an exposure draft which defined the industry as vessels operating within ports, harbours and other bodies of waters within the Australian coastline.

PN3556

It was the intention of the unions to have an award made that applied to all other maritime activities other than those covered by the specific awards, the Seagoing Award, the Offshore Oil and Gas Award and the Dredging Award and the Towage Award. In our submission filed in this matter on 22 June, that's filed in respect to the Ports, Harbours and Enclosed Waters Award, we address that difficulty and the award that we proposed or the coverage of the award that we propose is to operate in respect of all types of vessels used for navigation on waters that isn't covered by those other awards which we specifically refer to.

PN3557

We have suggested that the name of the award be changed to the Maritime Industry General Award 2010 because the name of the award that we previously suggested was confusing and it certainly confused the Commission in that they made an award that only was in enclosed internal waters. What the intention is and what the need is, is to have an award that covers coastal waters including the territorial sea 12 miles out and possibly beyond.

PN3558

The reasoning for that is set out in our written submission. It was then proposed that a Tourist Industry Award be made, a Maritime Industry Tourist Industry Award be made. We oppose the making of that award in the submissions which we filed on 17 June 2009. There is a later submission filed by those representing

the Whitsunday charter boat industry area. We have nothing to say in respect to that because it re-canvasses the matters covered in our filed submission.

PN3559

In short, what we propose is that if some recognition must be given to a shifting of ordinary hours and related penalty rates, then that should happen, but that should happen within the ambit of the coverage of the Maritime Industry General Award rather than making a separate award. The function as we understand the Commission is to reduce the number of awards, not to increase them.

PN3560

JUSTICE GIUDICE: Overall I think we will achieve that objective, Mr McNally.

PN3561

MR MCNALLY: We've done pretty well.

PN3562

JUSTICE GIUDICE: Can I just ask, Mr McNally, I don't want to interrupt you, but those two Queensland NAPSAs, the Whitsunday charter boat one and the North Queensland Boating Operators Award, the MUA was involved in the making of those awards, I think.

PN3563

MR MCNALLY: I am sorry?

PN3564

JUSTICE GIUDICE: The MUA was involved in the making of those awards or not?

PN3565

MR MCNALLY: To a great extent, the AWU's role when it was made was a greater role than the MUA.

PN3566

JUSTICE GIUDICE: I see.

PN3567

MR MCNALLY: Our concern is that the award or the NAPSA covers a very small area.

PN3568

JUSTICE GIUDICE: Yes.

PN3569

MR MCNALLY: Principally between Mackay and Bowen. You can't quite see one from the other, but it's a very small area. It is an area where the vessels that are used in respect of length, in respect of power don't necessarily differ from those vessels that are involved in the Maritime Industry General Award. The master of those vessels possesses the same qualifications and skills. The only exception to that might be that the master of a vessel may perform other functions such as drawing the attention of tourists to items of interest and items of historical importance and those sort of matters. We don't see the necessity for a general award. We may recognise that there may be some requirement to extend the ordinary hours of work with resulting penalties. Our submissions deal with that

alternative, but we don't see the necessity to have a separate award. If a separate award is to be made, it should be modelled on the Maritime Industry General Award with different provisions in relation to ordinary hours of work and the associated penalty rates that are attached to those ordinary hours of work. If the Commission pleases.

PN3570

JUSTICE GIUDICE: Thanks, Mr McNally. Yes, we're still dealing with the Marine Tourism and Charter Vessels Draft.

PN3571

MR MCNALLY: Might I add the which is the word that those that were responsible for the making of the exposure draft isn't defined anywhere which is another added difficulty.

PN3572

JUSTICE GIUDICE: Yes. Thank you. Are there any other submissions in relation to the Marine Tourism and Charter Vessels Award?

PN3573

MR MALONEY: Yes, your Honour, in Brisbane.

PN3574

JUSTICE GIUDICE: Yes, Mr Maloney.

PN3575

MR MALONEY: Your Honour, I think ours are the only other submissions in relation to this award. The MUA submissions simply say that there shouldn't be a Marine Tourism and Charter Vessels Award. Obviously our strong submission is that there should be, not only because it's not limited to the region between Mackay and Bowen, it also covers the whole of the coastline and it's designed to cover all of those tourism operators around the Australian coastline.

PN3576

We've already said in our earlier submissions that 85 per cent of the charter vessels in Australia are located within Queensland, New South Wales and WA and we find a total of 65 per cent in Queensland and New South Wales. It's not just limited to Far North Queensland, although that is where a significant number of operators are located and the rationale behind a separate award is that the industry itself which did include the MUA in its state union guises as the Merchant Service Guild and the Seamen's Union of Australia was directly involved in the making of the North Queensland Boating Operators Award as I was on behalf of the employers and it was definitely involved directly in the making of the consent Whitsunday Award and I stress that was by consent.

PN3577

Yes, the AWU was one of the major parties, but the MUA was also a party to that and to that consent arrangement and they can't deny that and now they say, well, that consent arrangement, we don't like that, it should be somewhere else. The exposure draft that's been made is quite limited in its coverage to marine tourism and those charter vessels. We confirm that it's designed to exclude the operation of coastal trading or freighter operations, common carriers, water taxis, regular passenger transport ferry services, some of which are government subsidised in various areas and those types of operations are not designed to be covered under

the marine tourism charter vessels and we say, look, they're quite appropriate to be covered under the proposed Maritime Industry Award 2010 as Mr McNally says, as the MUA argues for, but the provisions that have been designed for the Marine Tourism and Charter Vessels Award cater for those requirements where as we've already said in our submissions they're subject to the vagaries of weather, seasonal fluctuations, tourism fluctuations, et cetera.

PN3578

We have we believe addressed the areas of coverage in our submissions of 16 June and 26 June. The issue of classifications has already been covered in those submissions, as have the pay rates where we've tried to maintain the relatively unique arrangement that applied in the Whitsunday NAPSA for daily rates as well as providing for hourly rates, weekly and casual provisions. We've addressed the hours of work provision which was left in the exposure draft to be developed at clause 20.4 in our submissions of 16 June.

PN3579

We've also proposed that the allowances in the exposure draft at clause 14.5 should be adjusted as per our submissions of 16 June. The submission of the members of our associations if the Commission pleases is simply to say that the proposed conditions in either the ports et cetera award or the maritime award are simply not appropriate for these operators. They don't reflect the existing rates and conditions and they would impose very significant changes and very significant increases on those operations.

PN3580

The rates of pay, finally, if the Commission pleases, we've proposed are certainly in excess of any of the rates that have been proposed by the MUA and we say it's appropriate that they should be included in the proposed award and we set out those wage rates in our submission of 15 June with a comparison chart attached to them. Those are the submissions, if the Commission pleases.

PN3581

JUSTICE GIUDICE: Yes, thank you, Mr Maloney. Mr Warren.

PN3582

MR WARREN: Thank you, your Honour. Your Honour, can we say from the outset that we are fundamentally opposed to the submission made by my learned friend Mr McNally that there should be a Marine Industry General Award which would subsume the current exposure draft issued by the Commission covering marine tourism and charter vessels.

PN3583

Clearly in our submission the Commission has heard and considered this argument. There is a clear need for recognition of the particular and distinct nature of the tourism and charter vessels. We say the scope and coverage of the exposure draft is appropriate and should be maintained and the Commission should reject the submission put by my learned friend Mr McNally on behalf of his client union.

PN3584

With respect to the position of the Whitsunday Charter Board Industry Association we note the submissions filed and also the submissions made today

with respect to rates. The AFEI has a fundamental problem with the rates as expressed in the Whitsunday Charter Boat Industry Association submissions of 16 June in the hourly rates as expressed in clause 3.5. We note the Commission in its statement of 22 May in paragraphs 216 through 218 raised issues with this concept of a pay per day and the difficulty in obtaining an hourly rate and that appears to be the difficulty expressed further by the Whitsunday Charter Boat Association in the hourly rate in 3.5.

PN3585

We note that criticism is directed towards the AFEI position and the distinction drawn between daily and casual employees in the charter boat industry's submission at paragraph 6.1 and the indication there that there is no support from that association for AFEI's position on 26.2. I will return to that briefly in a moment. Can we indicate that the problem seems to have arisen if one looks to 3.5 of the Whitsunday Charter Boat Industry Association by drawing from the Queensland NAPSA which only described daily rates whether the person, and indeed the same daily rate, whether the person worked five hours or 10 hours they still received the same rate, yet they have established an hourly rate.

PN3586

If one looks to 3.5, by first nominating the daily rate, multiplying that by five to get a weekly rate and then dividing that weekly rate by 7.6 or by a 38 hour week to obtain an hourly rate. Now, the problem with that is the daily rate when established was not established on the basis of 7.6 hour and so it throws out a rate particularly at the master level significantly in excess of those that AFEI say are appropriate when one looks at the AFEI submission and in paragraph 14 of the AFEI submission if one goes there, this is the submission of 12 June that was filed, if one looks to clause 14 the hourly rates there were achieved by dividing the weekly rate prescribed in the New South Wales NAPSA by 38.

PN3587

There is currently in the New South Wales NAPSA a 40 hour provision but concession was given to the 38 hour week and those rates as can directly translate with the exception of crew level 3 and crew level 1, were directly translated there from the New South Wales NAPSA by a divisor of 38 and that gives an appropriate, we say, hourly rate which spreads from the master classification down to the crew level 1 classification. If the method of, we say, artificially creating an hourly rate is adopted as is pursued by the Whitsunday Charter Boat Association, the hourly rate particularly at the top end of the master's rate is skewed and significantly greater rate than is appropriate and that has been arrived at, as I've said, by starting with a daily rate and there is no hourly rate or weekly in the Queensland NAPSA.

PN3588

So starting with a daily rate, putting a notional 7.6 on that and you end up with an hourly rate. There clearly has been in the daily rates expressed in the Queensland NAPSA a recognition of the fluctuations in the amount of hours that a person works and that's not for us to comment on or to submit or have information of. But there must be some averaging system, but in any event, it is fundamentally wrong to start with a daily rate, multiply that daily rate by five to get a weekly rate and then divide the whole lot by 38 to get an hourly rate when your daily rate is

AMOU 8

not calculated apparently in the award either on a 40 hour week or a 38 hour week, hence the skewing.

PN3589

We note of course that the CVA in its submission, the Commercial Vessel Association of New South Wales, in its submission of 24 June it appears seems to come to that same conclusion in paragraphs 2 and 4 and particularly in 4 when the CVA indicates that the Queensland NAPSA, and I quote:

PN3590

In the absence of any definition for worked hours and no defined maximum hours the daily rate under the Queensland NAPSA cannot form a basis from which to derive an hourly rate as there is no mechanism to achieve.

PN3591

Those are the words of the CVA and we would support such a position. We note in the most recent submission of the MUA on this particular exposure draft in paragraph numbered 11 that the MUA appears to be pursuing a classification structure which rewards an employee for the type of qualification they have as opposed to paying the employee for the type of qualification they need to work the particular vessel. It appears as though from paragraphs 11 and following that that is the aim of that submission.

PN3592

We note in the Commercial Vessel Association submission of 17 June in paragraph numbered 3 that this issue is addressed and we note that therein the CVA says and I quote in the first paragraph of paragraph numbered 3:

PN3593

The necessary qualification required by the crew is determined by the governing state authority and is stipulated within the individual vessel survey permit.

PN3594

Indeed this appears to be recognised by the MUA in paragraph 12 of their most recent submission and I quote:

PN3595

In addition, these authorities set minimum manning requirements for commercial vessels. For some vessels there is a requirement that the manning include a person with an engineering certificate competency.

PN3596

Et cetera. And it is clear that the manning of the vessel, the qualification required to man that vessel and to navigate that vessel comes from the survey to the vessel and indeed if one returns to the Commercial Vessel Association's submission of 17 June, on the last page of that under heading Classification Structure and Definition, it is apparent that when one looks towards the bottom, master 5, navigate vessel requiring a master 5 certificate, master 5, navigate a vessel requiring master 4 certificate, et cetera.

PN3597

So in other words, that is an appropriate classification or descriptor of the duties required to man that vessel and that is the appropriate way in our submission that

the matter should be addressed and the employee should be paid, even if the person has a master 1, if the vessel only requires a master 4 they shouldn't be paid as a master 1 and so much is clear. One only has to say that to see the good common sense in my respectful submission of that position. Whilst on the CVA submission of 17 June we note paragraph 6 of that submission and it deals with the capacity of an employee to obtain recognition by on the job training and we say that is an appropriate way of addressing that issue and the qualification training not be mandatory but be able to be obtained by on the job training.

PN3598

Finally, your Honours and Mr Commissioner, might I just refer to the exposure draft and indeed the paragraph that issue was taken by our Queensland friend with respect to 26.2. It appears, with respect, when one looks at the wording in 26.2 there it refers to a daily basis yet it is clear from clause 10 that the only types of employment are full time, part time and casual and that's an appropriate break and there shouldn't be a recognition necessarily of daily basis in 26.2. We say in terms of clause 10 it would be more appropriate to say employees other than employees engaged on a casual basis required to work on Christmas Day be paid treble time and then in 26.3, instead of weekly employees to be consistent with clause 10 it should say full time and part time employees required to work on public holidays other than Christmas Day should be paid double time.

PN3599

It just links 26.2 and 3 to clause 10 and there is then internal consistency within the expressions of the award. Unless there is any further questions from the Bench those are our submissions.

PN3600

JUSTICE GIUDICE: Mr Warren, do you make any submission about the remuneration of employees engaged on an overnight charter?

PN3601

MR WARREN: No, your Honour.

PN3602

JUSTICE GIUDICE: You don't have any helpful suggestions on how the parties might deal with that? I understand your position.

PN3603

MR WARREN: I don't have a brief to that extent, your Honour, with respect.

PN3604

JUSTICE GIUDICE: No.

PN3605

MR WARREN: Thank you. Does your Honour wish me to make any comment with respect to ports, harbours and closed water vessels or will I wait - - -

PN3606

JUSTICE GIUDICE: No, I think we will take that in sequence.

PN3607

MR WARREN: Thank you, your Honour.

PN3608

JUSTICE GIUDICE: Thank you. Is there any other submissions in relation to this draft? Mr McNally.

PN3609

MR MCNALLY: Yes, your Honour. Contrary to Mr Warren's understanding of our submissions we Australian Federation of Employers. We don't suggest that the classifications be described by reference to qualifications. We recognise that a person with a higher qualification may be employed in a lower capacity. If the Commission pleases.

PN3610

JUSTICE GIUDICE: Yes, thank you. All right. We might deal now with the Alpine Resorts Draft Award. Are there any submissions in relation to that? Mr Harmer?

PN3611

MR M HARMER: Yes, your Honour, if the Commission pleases. The Australian Ski Areas Association amends the exposure draft award which we basically note extends fairly unique coverage of this industry across a number of classifications but that exposure draft faces challenges under the later set of submissions from a number of unions including the LHMU, ASU, SDA, AMWU and CEPU. Now, most of the submissions in question were filed in writing and in accordance with the timetable by 12 June 2009, however there were further submissions from the AWU on 18 June and only yesterday you received some further written submissions from the LHMU.

PN3612

Now, in respect of all the unions submissions it was tempting on our part given the extensive range of issues raised going to coverage and terms and conditions under the exposure draft to put on a written response but consistent with the directions of the Commission we stayed our hand. We're in a position today where we will attempt to address orally all of the unions submissions although I must say in relation to the LHMU's submission lodged yesterday I do not have instructions and it does go not only to some issues of coverage in terms and conditions but specifically to considerable tables of rates, so we would seek the leave of the Commission to address that somehow although we're entirely in the Commission's hands in that regard.

PN3613

JUSTICE GIUDICE: Yes.

PN3614

MR HARMER: If the Commission pleases, I would like to make some submissions going to issues of general principle relating to coverage of this particular exposure draft award or at least the principles that should be applied in resolving what are not insignificant contests over the coverage of the award. The first point we make is that the exposure draft consistent with section 576A of the Act properly reduces regulatory burden on the employers in this unique industry, promotes flexible work practices whilst maintaining a fair minimum safety net for relevant employees. It also fits in with paragraph 9 of the Consolidated Request in that it seeks to minimise the number of awards impacting on employees in this industry which but for this specific industry award could number up to 15.

PN3615

Now, the unions, five in particular, have now challenged that outcome under the exposure draft, challenged to our mind the achievement of those specific objects of the Act and the Consolidated Request. The next point we make on coverage is that in our respectful submission in this industry coverage has to be determined by reference to the industry of the employer in the case of all classifications which are integral to the industry and it's our respectful submission that all classifications referred to within the current exposure draft fit that description. Now, in support of that submission we just very briefly summarise for the members of the Commission the unique aspects of work in this particular industry and I will be brief I guarantee.

PN3616

But by way of summary, the work is highly seasonal. It basically involves the quantum of work being highly dependent on day to day weather conditions. That in turn demands a higher level of flexibility across all areas of work and that really to transfer employees in all and any classifications from one part of a resort to another to meet exigencies of weather on any particular day, the work of course is performed in extreme weather conditions and that impacts on some specific protective clothing and ski equipment requirements that are addressed within this award. There's an industry specific career path training and set of conditions and importantly, many of the employees given the flexibility requirements do and indeed actively seek to perform a number of roles, multiple roles within a particular season so that they can maintain work levels for themselves in all forms of weather.

PN3617

Specifically in the area of penalties the busiest times for this particular industry are on weekends and public holidays. Large percentages of the workforce come to the area to have the benefit of skiing and of course the slopes are least accessible on weekends when custom is busiest for the resorts and the employees seek and enjoy having week days off so that they can ski when the slopes are less crowded by normal customers and accordingly flexible arrangements such as in 5 and 7 and a lack of what would be called traditional penalties have been characteristic of this industry throughout its entire history.

PN3618

There are also many benefits for employees working in the industry including free lift passes which range in value from between 1100 to \$1300 for approximately a three months season, subsidised accommodation, subsidised ski equipment, subsidised meals and a whole range of benefits involved for employees who are supported to come to the remote ski areas to work in this industry. Now, what we have now faced through the five unions concerned is an attempt to carve out from those specific arrangements that have been included in the exposure draft for a number of stated classifications are certain categories of work and in our respectful submission the modern awards in question do not in any way, shape or form cater appropriately for the unique conditions that we have set out.

PN3619

And specifically in terms of the Commission, the approach the Commission has been adopting to issues of coverage, as I say, industry of employer would be appropriate and having particular regard to the work performed and the

environment in which it is performed, adopting some of the wordage inserted in coverage clauses by the Commission in its modern awards we respectfully submit there's no question that the only award that can cater for the flexibility, transferability of work and unique conditions is the exposure draft award before the Commission.

PN3620

We further submit that the Commission in its 19 December 2008 award modernisation decision at paragraph 23 indicated that awards with occupational coverage would not cover employees covered by an industry award which contained relevant classifications and again it's our respectful submission that here we have an industry award that covers the relevant classifications, has done so historically in either Victoria or New South Wales, which is where the vast preponderance of the industry sits and accordingly on the basis of that approach it would be appropriate to leave the coverage of this particular industry or exposure draft in the award intact.

PN3621

The next point we seek to make on coverage goes to the weight to be given to certain historical aspects of coverage. The first relates to Victorian award coverage which has been permanent historically in the context of Victorian common rule awards and in accordance with the Victorian common rule principles adopted by a Full Bench of this Commission and absent substantial challenge and yet that coverage has extended classifications such as workshop and a number of areas of work which are under challenge by the unions raising issue with the exposure draft.

PN3622

Secondly, in terms of the history in New South Wales, in our earlier written submissions we pointed to the decision of Watson J that founded the award in New South Wales that covers the industry that covers the industry, main Ski Industry State Award which is now technically a PCSA which I will come to. That particular decision by Watson J was described as establishing an equitable base for the relevant employees in the context of structural efficiency principle under the previous principles of wage fixation and involved challenge by a large number of unions to the attempt to create an island in effect for the award covering a number of classifications including many of those now challenged in this exercise.

PN3623

Now, all of the unions that raised their heads to make challenge in that particular matter that led to Watson J's decision either reached arrangements with the AWU resulting in their awards being the subject of specific exemption from the scope of the - sorry, there being specific exemption from those unions awards such that they did not impact on the unique coverage, island coverage if you like of the Ski Industry Award, or in the case, for example, that the SDA had that exemption within the Shop Employees State Award mandated by a later decision of the Commission.

PN3624

So what we have in a number of unions now raising objection to coverage is a challenge to matters which have been historically determined both in Victoria and

New South Wales properly in a common rule context in each state and really we have an attempt to overturn history and in some cases specific agreements reached between unions and employers on what would be historical coverage determined long ago in the case of both New South Wales and Victoria. The next point I just briefly make is that there is reference made in some of the unions' submissions to the fact that the Ski Industry Awards in New South Wales are PCSAs.

PN3625

In our respectful submission that arises from a specific exigency of the New South Wales legislation introduced by the New South Wales Government in order to attempt to protect certain consent award arrangements on the onset of WorkChoices and does not in our respectful submission change the fact that for many years up until the WorkChoices legislation they operated as awards properly and would have been NAPSAs normally other than for that specific New South Wales legislation and we respectfully submit that that doesn't reduce the weight that should be allocated to either the Ski Industry State Award or the Ski Instructors State Award for the purposes of coverage or otherwise before this Commission.

PN3626

The next point we make is that all classifications in the exposure draft have historically been subject to coverage by either the New South Wales or the Victorian awards. We don't press that to the point whereby both states always covered all classifications, although we note that in New South Wales apart from their being specific reference to employees such as in the retail area, there was a not elsewhere included provision called resort worker, which as I will come to, was utilised to deal with employees performing municipal style duties with the resorts, hospitality workers, childcare workers, and indeed as a result the Childcare Award in New South Wales was the subject of specific exemption, as was the Shop Employees State Award as I will come back to.

PN3627

So there is precedent for the coverage of the entire exposure draft determined in the common rule context that I have referred to. The next point I wish to make by way of introduction on the coverage issue is that the Commission's decision on 19 December 2008 at paragraph 24 indicated that maintenance classifications would not be included in industry awards unless there was existing arrangements that made it desirable to do so. Now, significantly in this exposure draft we have maintenance classifications included and in our respectful submission that principle if you like stated on 19 December 2008 is met here in that there is a unique history of coverage in Victoria of maintenance classifications and a unique set of circumstances in terms of the conditions I've referred to that extend also to maintenance workers who equally may want to ski during the off days, during the middle of the week or take up multiple roles when maintenance work is low or do any number of the flexible things that are permitted historically in this industry and indeed under the exposure draft.

PN3628

So those introductory comments we respectfully submit address in general the concept of the attack that we now see from some five unions on coverage of the scope of this exposure draft and I would now seek to move briefly, if the Commission will permit me, to address in turn each of the unions challenging

either coverage or by reference to their own modern award conditions in this exposure draft and I will - - -

PN3629

JUSTICE GIUDICE: Mr Harmer, these aren't really new issues, are they? I mean your submissions of 12 June, was it, do deal with these questions of coverage and I appreciate some refinement of the arguments might have been developed by the unions in their submissions.

PN3630

MR HARMER: Yes, your Honour.

PN3631

JUSTICE GIUDICE: But I would ask you to bear in mind that the question of coverage has hardly arisen in the last little while so you might bear that in mind in considering how much detail you deal with in your presentation today.

PN3632

MR HARMER: Yes, your Honour. Thank you for that guidance. I won't then respond in detail to the submissions all of which were of course lodged on 12 June we haven't formally replied to.

PN3633

JUSTICE GIUDICE: No.

PN3634

MR HARMER: But to the extent that we are overlapping with issues previously addressed I will try and curtail my comments.

PN3635

JUSTICE GIUDICE: Thank you.

PN3636

MR HARMER: Perhaps briefly then I will refer to first of all the two submissions lodged by the LHMU. They address specifically hospitality and childcare employees. Again the general submissions I have made going to the unique nature of this industry apply to those particular employees and I note in relation to childcare the specific exemption provided to the Miscellaneous Workers Kindergartens and Childcare Centres State Award New South Wales when the issue of coverage first came up for the industry and also the fact that hospitality workers have been traditionally covered under the resort worker classification New South Wales and also within Victoria.

PN3637

There is thereafter within the LHMU's submission a number of observations about specific conditions which again I acknowledge we have probably addressed in our own submissions concerning those conditions sufficiently to respond to, although I note specifically that there's emphasis on hourly rates and I just note the unique history of the developments of those rates which do differ because of the many other benefits involved in the industry from rates in the mainstream Hospitality or Childcare Awards. We also rely on our written submissions in terms of specific examples we've provided of both childcare workers requiring flexibility in that they do look after children within a ski school context and have a

career path in that area, as do hospitality workers who can rotate between work on the slopes and indoors within hospitality arrangements.

PN3638

The ASU's specific further submissions which were filed yesterday, or at least we received a copy of them yesterday, again I'll just make a few brief observations because, as I say, I don't have any detailed instructions on the material but the LHMU tries to place weight on the PCSA status of the awards which I've addressed in New South Wales. Secondly, there's some observations on coverage which we've already adequately addressed, and there's reference to the inappropriateness of the not elsewhere included style classification which, of course, we have in this matter dismantled and which now appears in the exposure draft in a series of specific classifications going to hospitality, childcare and municipal services. Other than that the LHMU submissions of yesterday contain a detailed number of comparisons of rates and conditions which, as I say, I have not received instructions on and I'm not properly in a position to respond to and merely reserve our position on that. That deals with the LHMU.

PN3639

The ASU raises similar issues and our response again is similar. The only specific aspect of the ASU submission which goes beyond the hospitality and childcare workers goes to both clerical and municipal employees. Both those categories have been historically covered by the awards I've referred to, particularly in New South Wales where, if I can just explain very briefly in terms of municipal services, obviously the exposure draft only covers employers in this unique industry. It doesn't cover local government work but within the lease allocated to each resort within the National Park, they are very much isolated and self-contained operations and accommodate a large number of people and sublet to a large number of operations for accommodation and entertainment and other purposes. All municipal services have to be on a self-contained basis provided by each of the resorts and it's for that historical reason that the industry awards have catered for municipal services, if you like, water supply and other things being supplied by these resorts and that's been dealt with under the resort work category, for example in New South Wales.

PN3640

In terms of the SDA's submissions, it's submissions go more to issues of comparative rates with the modern awards. I've referred to the express exemption from the Shop Employees State Award in terms of the coverage issue and won't repeat the unique nature of the industry that warrants different rates.

PN3641

Finally, both the AMWU and the CEPU make submissions attempting to extricate from the exposure draft maintenance staff. As I've already mentioned there is historical coverage of workshop employees in Victoria. There is also the fact that the unique conditions I referred to do impact on and are relevant to both mechanical and electrical maintenance employees and in our respectful submission, without labouring the point, we believe that the complete scope of classifications included in the exposure draft should remain intact as all those classifications are integral to this unique industry.

PN3642

If the Commission please, the AWU, which notably is the principal union in this industry, does not object to any aspect of the coverage of the exposure draft, other than suggesting some other categories of employers might be included, which we've already addressed in writing and I won't further address on that. I may, if the Commission will permit me, just briefly reply to some fresh issues raised with the exposure draft content by the AWU and I acknowledge that these are fairly trivial in nature but they're matters we haven't previously had an opportunity to reply to.

PN3643

Firstly, in paragraph 2 of the AWU's submission of 12 June there's an issue raised in relation to the necessity for a definition of outdoor employee. That is necessary because it links into certain equipment and boot provisions in the wider award. At paragraphs 4 to 7 there are submissions made in respect of seasonal employees and the need for termination notice and severance provisions. We have already addressed that issue so I won't dwell on it, in our prior written submissions, and we rely on those but certainly any reversion to that form of lack of recognition that our employees are engaged for a unique and separate period of seasonal work with no guaranteed return next season, would impose huge costs on this industry and is inappropriate.

PN3644

Paragraphs 8 to 9 of the AWU's submission of 12 June there's reference to the need for minimum guaranteed hours for snow sports instructors. That's inappropriate, given the high level of casualisation across snow sports instructors and I note to the extent that New South Wales has had some guaranteed hours, it's been based upon the high level of certain ski instructors and has been variable rather than fixed so we consider that an inappropriate suggested change to the exposure draft.

PN3645

At paragraph 10 of their submissions of 12 June there's reference to monthly superannuation contributions. The resorts consider it appropriate that that should be quarterly in accordance with taxation requirements.

PN3646

There's then the further submissions on 18 June 2009 where there's an attempt at paragraph 6 to question the calculation of the seasonal rates that are set out in the exposure draft. We'd just like to correct those calculations put forward by the AWU and confirm that the loading is 1/12th and we press the calculations in the exposure draft.

PN3647

At paragraph 7 there's a request from the AWU in relation to the requirements by employers for employees to obtain certain equipment. We would like to concede that point and indicate that if an employer requires an employee to purchase clothing, the employer will reimburse the employee so we are pleased for that change to occur to the exposure draft.

PN3648

At paragraphs 8 and 9 there's an issue raised about airfare reimbursement which has been a limited benefit in New South Wales but not applied at all historically in

Victoria and its aim in New South Wales was to attract back to the resorts the skills and abilities of people who serve in the northern hemisphere outside our season and there's an attraction or retention point that has been specific to the consent awards in that state. We oppose its extension across the entire industry so applies it only to limited more senior levels of snow sports instructors in New South Wales. We oppose that pressed for change by the AWU.

PN3649

We otherwise press for the benefits that we've alluded to within our own written submissions and, if the Commission pleases, unless there's any questions that's all I sought to raise in response to the various union written submissions but I do repeat again that we haven't had an opportunity to take proper instructions on the LHMU submissions, particularly on rates received only yesterday. If it pleases the Commission.

PN3650

JUSTICE GIUDICE: Yes, well, I think if you could make any written response you wish to as promptly as possible, that would be appreciated.

PN3651

MR HARMER: May it please the Commission. We'll attempt to do that within seven days if that's permissible.

PN3652

JUSTICE GIUDICE: Thank you. Yes, who's next?

PN3653

MR RYAN: If the Commission pleases, on behalf SDA, I'd make some responses to some of the submissions that have been filed in this matter. The LHMU submission appears to have hospitality workers and childcare workers removed from the award. The SDA didn't go down the same approach in terms of our written submission, however, the SDA would be quite comfortable in accepting the removal of the service workers from the award. Our prime submission was based upon the premise that retail workers, hair and beauty workers or fast food workers who are employed under the terms of the exposure draft award should have not less than the same relative classification structure as defined industry awards. That was the details of our written submission as filed.

PN3654

The key issue clearly in terms of whether or not the service workers are in this award or out is really determined by the issue of the coverage clause of the Alpine Resorts Award and the very coverage clause of the Alpine Resorts Award means that the other industry awards will necessarily apply in the snow sports industry or in the ski fields and that's simply because the coverage clause of the Alpine Resorts Award is so specific, it actually should probably be renamed the Alpine Lifting Award because the whole definition of the industry is dependent upon an establishment that includes alpine lifting which simply means that any establishment in the ski fields or in the snow sports industry that does not provide alpine lifting is simply not covered by the Alpine Resorts Award.

PN3655

In that sense it's not an award covering the resorts, it's an award covering only those establishments that include alpine lifting. Very clearly, in our submission,

not all employers who are employers within the ski fields area are going to be employers who include alpine lifting. That very fact means that the other industry awards will apply and it is inequitable, in our submission, for employees only under this award to be put in a lesser position than employees who would also work in the ski fields who would be employed under the prime industry awards that would cover their respective classifications.

PN3656

We note that the submissions of the Australian Ski Areas Association as filed on 12 June had attached to it amendments that they sought to the award and one of the amendments that they seek is to delete clause 4.4 from the award. It's a standard clause in most of the modern awards which relates to the operation of other awards which may be appropriate. The general submission of the Australian Ski Areas Association is that there is no other award that is appropriate, therefore clause 4.4 is simply not required. In our very strong submission it is required because even with those establishments that provide alpine lifting, it is apparent from the classification structure in the Alpine Resorts Award that not every possible job classification which could be used in an alpine resort or by an employer who first the definition of an alpine resort, is necessarily included in the exposure draft. On the basis that not every possible job classification is included in the award, then there must be the capacity for other awards to apply if there are awards that would be more specific to a part job title. On that basis we'd certainly oppose the removal of clause 4.4 from the exposure draft award.

PN3657

The key issue that we raise concerns the issues of conditions of employment for retail workers, hair and beauty workers and fast food industry workers. We note even today in the oral submissions made by the ASAA that one of the justifications for the lack of loadings and the low rates in the award is that there are clearly other benefits that employees can get by working for an establishment that provides alpine lifting and one of those benefits is things such as they might get free lift tickets. Well, it doesn't matter what may or may not occur, they're not conditions that are in the award itself. Any of the fringe benefits that may be applied simply don't form part of the valid safety net because they're not award terms and conditions of employment and on that basis, anything that may be an extra or a freebie is simply not relevant for the determination of what constitutes the fair and effective safety net which does mean, in our very strong submission, that you need to discount any of the fringe benefits that may apply and only then concentrate of what are the essential safety net conditions determined by the exposure draft of the Alpine Resorts Award vis-à-vis the awards issued by the Commission certainly in stage 1 which is the area of interest for the SDA, the General Retail Industry Award, the Hair and Beauty Industry Award and the Fast Food Industry Award.

PN3658

The other particular issue we'd raise in relation to the proposed amended draft as provided by the Australian Ski Areas Association is that clause 25.1 of their draft seeks to remove the public holiday loading for casuals, keeps it for permanent employees but removes it for casuals. We would strongly oppose that. The public holiday loading recognises the value of the holiday for all employees and to suggest that casual employees do not warrant any extra remuneration for public

holiday work certainly goes against the approach of the Commission in relation to all of the other modern awards that have been issued so far.

PN3659

Clause 26.2 of the Australian Ski Areas Association amended draft seeks reductions in the overtime rate. The first reduction they seek is that for the first two hours of overtime the rate should be reduced from time and a half to single time. The effect of that is that's a default creation of a 40 hour week because the moment there is no overtime penalty being paid for the first two hours, and if they're treated as simply additional ordinary hours, it is by stealth the introduction of a 40 hour week. The second reduction that they seek is to reduce the overtime rate for the second two hours from double time to time and a half. In other words, what they're really saying is overtime will only occur after 40 hours have effectively been worked. The SDA would strongly oppose the suggested amendments to clause 26.2.

PN3660

The Australian Ski Areas Association also seeks to introduce a new clause at clause 13.4 which is a rolling notice provision which relates to seasonal workers who have already been given notice of termination and then, because of good weather in the Australian Ski Areas Association's concept of good weather which is freezing cold and the stuff I'd like to be sitting around a fire at home rather than being out in the weather, but what they refer to as good weather which may extend the ski season, they then want to reduce the period of notice, if there's an extension of work, down to one hour. The SDA would oppose the concept of clause 13.4. If notice has been given in accordance with the notice requirements of the Act or the award, it is quite simple, we would suggest, for additional forms of employment to continue after the termination of the seasonal employment. Casual employment comes to mind, in which case they don't need the rolling notice provision because as casuals there would be termination on the basis of an hour, or alternatively, the employers could withdraw the notice and then reissue the notice subject to what they understand to be the extent of the good weather that would extend the season. In any event, the SDA strongly opposes the concept behind clause 13.4 and its proposed inclusion in the award.

PN3661

JUSTICE GIUDICE: You don't think there should be any concession for the weather.

PN3662

MR RYAN: No, simply because the industry operates - generally has a set start date and it starts, even if there is no snow - I mean, I'm not a fan of skiing but I understand some people will go up to the ski resorts even if there's no snow and some people go to ski resorts even when there is snow but never ski because they're into a social life drinking, wining and dining and other activities that don't involve skiing. I think it's necessarily weather dependent.

PN3663

JUSTICE GIUDICE: I think we may be straying from the issue.

PN3664

MR RYAN: They're the submissions of the SDA.

PN3665

JUSTICE GIUDICE: Thanks, Mr Ryan. Mr Ash.

PN3666

MR ASH: Mr Harmer mentioned that we filed written submissions yesterday so in the course of those I'll be very brief. The submissions of the LHMU are that the current award landscape does not provide for the inclusion of hospitality and childcare workers in an industry award that covers ski related employment. As the AWU note in their submission they cannot comment on the appropriateness of terms and conditions for employees other than those regulated by the list of ski related awards. The LHMU submits that if an award is to be made to cover ski related work it should be made on the basis of current award regulation in the industry.

PN3667

It also appears that some of the awards that Mr Harmer or the ASAA have sought to source conditions from are PCSAs for the purpose of the award modernisation process, as mentioned by Mr Harmer. Childcare and hospitality workers are currently covered by the relevant industry awards, as is shown in part 1 of our submission filed yesterday and previously. These workers are often required to maintain industry relevant qualifications and training relating to outside regulation. This is related to the industry they work in, not their occasional employment for parts of the year in alpine resorts.

PN3668

As the tables appended to our submission yesterday demonstrate, the exposure draft removes almost all the award safety net conditions that currently apply to workers in LHMU classifications at alpine resorts, notably, the trade rate is also below the minimum rate for tradespeople and the ASAA proposal does not appropriately recognise the numerous work value cases that have set the appropriate rates for childcare workers in particular, but also hospitality workers.

PN3669

We would also agree with the submission of Mr Ryan in relation to the comments on fringe benefits. We would see that as unrelated to the award safety net and an attraction and retention issue for the individual employer in ski resorts. If the Commission pleases.

PN3670

JUSTICE GIUDICE: Mr Ash, the issue of the existing award coverage in relation to hospitality workers, I think the argument against you is that the classification of resort worker under the Ski Industry State Award would cover those classifications.

MR ASH: If I understand correctly, at present those workers are being picked up, and we would argue that it's a misapplication of the catch-all provision, picked up by the catch-all provision in that award and that the appropriate award that should be applying is the applicable NAPSA.

PN3671

JUSTICE GIUDICE: Presumably there is some way of knowing whether in fact hospitality employees are covered by the resort workers classification at present and paid under it. That's what's suggested.

PN3672

MR ASH: I'll have to take that question on notice, your Honour.

PN3673

JUSTICE GIUDICE: Thank you. Ms Angus.

PN3674

MS ANGUS: Thank you, your Honour. Your Honour, the AWU position in relation to coverage has been slightly mischaracterized by the representative of ASAA. It's not so much that we agree with the published outline in the exposure draft, rather that we can only make - our submissions only extend to the application of the modern award as it covers those classifications that appear in the three Ski Industry Awards.

PN3675

Your Honours and Commissioner, the Ski Industry Award there's been some discussion about does include a reference to a classification called resort worker which I'm advised only applies to the equivalent of a general hand provision. From my understanding of the industry, the three Ski Industry Awards to which we've referred to in our submissions, cover essentially outdoor employees and that hospitality, childcare and retail workers have not fallen within the scope of those three awards. We'd certainly support the submissions of my colleagues from the two previous speaking unions that any Alpine Resorts Award should not operate as a ghetto award for childcare, hospitality and retail workers and so we'd support the general approach that if those classifications are to be included, then the terms and conditions attached to those classifications should be consistent with other relevant modern awards.

PN3676

In respect to the content of the exposure draft, in large part we are content with the content as it applies to outdoor employees, subject to the comments that we've included in our written submissions. There are a number of areas that we continue to press where the exposure draft departs from what we say is the appropriate safety net for the award classifications that we represent. They are our submissions.

PN3677

JUSTICE GIUDICE: Thank you. Any other submissions?

PN3678

MR HARVEY: Your Honour, in Melbourne, ASU.

PN3679

JUSTICE GIUDICE: Yes, Mr Harvey.

PN3680

MR HARVEY: Thank you, your Honour, the ASU has submitted written submissions in this matter and I'm hearing myself as I say this, your Honour, there's a bit of feedback, but the ASU has filed written submissions dated 12 June. I think Mr Harmer at one stage referred to some ASU submissions filed yesterday but I think it's clear that they were LHMU submissions, not ASU submissions. We only filed one set of submissions with regard to the exposure draft award.

PN3681

Those submissions, which I won't go over, did address just two issues; firstly, the coverage or the appearance that the award was going to cover local government employees and in our written submissions we did indicate the source of our concern about that which was largely two things, your Honours and Commissioner Smith, and that was actually with respect to my colleague from the AWU that in the AWU's original submissions back on 26 March they referred to the Victorian Alpine Resorts Award as one of the underpinning awards which should be considered as part of this and went on to say and I quote:

PN3682

The award regulates public sector and local government employees undertaking work such as rubbish collection, park attendants, ski patrollers at alpine resorts, civil maintenance work.

PN3683

Therefore, we are also concerned to see in the exposure draft reference to a classification dealing with municipal services and some misapprehension perhaps continuing that this work did apply to local government employees or work performed by local government employees. I think in that respect, your Honours and Commissioner, Mr Harmer's submissions have probably clarified that position today as to the source of that particular classification and I think in doing so he referred to the fact that certain leases that applied in what are, as I understand, national parks required the resorts to undertake some work which might be considered to be of sort of a municipal nature. In that respect, if that matter is reasonably clear, then this doesn't apply to local government employees and that local government work is not affected by this proposed award, then I don't need to take that matter any further.

PN3684

The second matter that the ASU's submissions did deal with was simply the rate of pay with regard to clerical employees either - if you compared them with hospitality workers under the Hospitality Award or clerks under the Modern Clerks Award, that the rates of pay were too low if that comparison was made and we stand by those submissions. I don't think Mr Harmer addressed the level of pay for clerical classifications, either as clerical hospitality workers or clerical workers generally so we would maintain our submissions with regard to that particular matter.

PN3685

Other than that, your Honour, we agree with the submissions made by my colleagues from the LHMU. We have specifically previously supported their submissions. I'm not sure whether I've seen their submissions dated yesterday. I have two copies in my file, two submissions from the LHMU but both of them appear to be undated and because I don't have access to the Commission's website here, I can't check but generally speaking, we certainly support the LHMU's submissions and also those of the SDA that have been made today. If the Commission pleases.

PN3686

JUSTICE GIUDICE: Mr Harmer, I wonder if you have any submission to make about the issue raised as to the coverage of the award, in particular the definition of alpine resort.

PN3687

MR HARMER: The definition is satisfactory to the Australian Ski Areas Association, your Honour. The resort operators measure their productivity and market share by reference to ski lift hours or trips and all of the alpine resorts operate ski lifts and it would appear to be a significant distinguishing feature compared to other employers in the region of which there obviously are some. The unique circumstances we face and I apologise if this is not directly in response to your question, your Honour, but in response to comments made by some of the unions, we cannot emphasise too much how much the exigencies of the weather can devastate our business and how much poor weather in terms of lack of snow and the reporting of it can reduce demand for our product to such a significant extent as to render the resorts non-viable in some seasons.

PN3688

JUSTICE GIUDICE: Yes, Mr Harmer, I was particularly interested in the definition and the submission that was made about the requirement that the resort include alpine lifting. The suggestion seemed to have been made that there would be other resorts that don't include alpine lifting which would be covered by other awards and that was the issue that I was interested in your submission on.

PN3689

MR HARMER: In our respectful submission, your Honour, there would be no alpine resorts involved in the ski industry as we understand it that does not involve ski lifts, so I am unable to assist with the nature of any resort operating in the ski areas that would fall into that category. There are, of course, your Honour, for example in Jindabyne there are operations that might be described as resorts in terms of accommodation and things of that nature which some other facilities, but they do not operate in the ski area and do not fall under the intended coverage of the exposure draft.

PN3690

JUSTICE GIUDICE: And with the exception of lifting, do those resorts or other establishments provide the same or similar services to the public as the resorts covered by this award.

PN3691

MR HARMER: The example I just used, your Honour, was talking about lower areas of altitude, so they're not operating in the precise region, they're not as heavily impacted by snow and they're not providing any of the services associated with skiing that we are dealing with, in our respectful submission, your Honour.

PN3692

JUSTICE GIUDICE: Thank you.

PN3693

MR HARMER: It's not a like with like comparison.

PN3694

JUSTICE GIUDICE: Thank you.

PN3695

SENIOR DEPUTY PRESIDENT WATSON: Mr Harmer, the wage rates in the exposure draft reflect those proposed by the association you're representing, is that correct?

PN3696

MR HARMER: In large part as I understand it, your Honour, I think those with me will correct me if I'm wrong, certainly as I understand it there are some rates and conditions that exceed both the existing awards in Victoria or New South Wales, but the rates reflect the historical rates in large part, your Honour.

PN3697

SENIOR DEPUTY PRESIDENT WATSON: In your initial submission you explained the derivation of those rates as obtaining of rates from various awards in a broad-banding sort of exercise. How did the Association derive a range of hospitality rates from a single resort worker rate or were there other hospitality rates drawn upon?

PN3698

MR HARMER: In relation to the issue of hospitality workers, on my instructions a large number of resorts in New South Wales, for example, utilise that resort worker category for child care, for hospitality, for municipal and a range of other services not elsewhere included. In relation to hospitality specifically, there are resorts such as Thredbo, your Honour, which is part of the Amalgamated Holdings Group and that group controls hotels and that particular resort has been a member of the AHA and so historically has complied with the federal Hospitality Award, but that's an exigency based on their specific employer group membership. As I understand it, your Honour, the resorts building off the not elsewhere included classification and having reference also to the federal Hospitality Award came up with their own specific categorisation. Your Honour, I can't be any more particular than that.

PN3699

SENIOR DEPUTY PRESIDENT WATSON: Is it true that the rate in each case for a comparable hospitality worker is in fact less than that in the Hospitality Modern Award?

PN3700

MR HARMER: Marginally, your Honour, and again - - -

PN3701

SENIOR DEPUTY PRESIDENT WATSON: That's on the base rate and then there's the issue of penalties as well.

PN3702

MR HARMER: Yes, your Honour, and that's historically been the case going back again for example in New South Wales to the decision of Watts J and that was understood to be the case given the whole range of other exigencies of the industry and benefits of it, that was specifically listed in his Honour's decision in approving what were essentially consent arrangements between the AWU and the resorts at that time, but seeing as I indicated establishing a suitable equitable base in compliance with the principles of wage fixation at that time have since been adjusted by reference to National Wage Case decisions up to the point where the New South Wales awards became PCSAs by virtue of a quirk of New South Wales legislation. I understand that the rates in the exposure draft had been adjusted to acknowledge the lack of adjustment of PCSAs since the inception of WorkChoices, your Honour.

PN3703

SENIOR DEPUTY PRESIDENT WATSON: And when you say rates, you mean the rates generally beyond hospitality?

PN3704

MR HARMER: Yes, your Honour.

PN3705

SENIOR DEPUTY PRESIDENT WATSON: Because there's only one classification in that award.

PN3706

MR HARMER: That's correct, your Honour.

PN3707

SENIOR DEPUTY PRESIDENT WATSON: Dealing with you say hospitality. Very well, thank you, Mr Harmer.

PN3708

MR HARMER: Thank you, your Honour.



PN3709

JUSTICE GIUDICE: Is there any other submissions in relation to the alpine resorts draft? Very well, we will move to the ports and harbours area. Who would like to commence, port and harbour services?

PN3710

MR MCNALLY: Your Honour, the Maritime Union wish to rely on their written submissions filed on 12 June.

PN3711

JUSTICE GIUDICE: Thank you, Mr McNally. Mr Morris.

PN3712

MR MORRIS: Thank you, your Honour.

PN3713

JUSTICE GIUDICE: Mr Warren.

PN3714

MR WARREN: Your Honour, with specific reference - could I firstly indicate that the AFEI maintains the position that the exposure draft of Ports, Harbours and Enclosed Water Vessels Award 2010 and the enclosed coverage clause in that award is appropriate, properly meets the needs of the industries that it covers and the Commission should with respect to my learned friend reject the suggestion or the submission that the persons currently covered by that award should be covered by some general marine award and we support the establishment of a Ports, Harbours and Enclosed Water Vessels Award and would submit that the coverage clause should be maintained.

PN3715

With respect to the submission of the MUA most recently filed and clause 25 of that submission, it is put against the position of the AFEI that there is a requirement from the Minister that there be no reduction in terms and conditions and therefore the position put by the AFEI should be rejected with respect to rates. It goes without saying, but we once again remind the Commission that the

Request is not a requirement. The Request in paragraph 2 from the Minister expresses an intention. It expresses a lack of intention that any modern award should disadvantage employees.

PN3716

Equally it expresses a lack of intention that it should result in an increased cost for employees. It is an equal and balanced intention and it is not a requirement. We further note that there has been a legislative response it would appear to the concerns with respect to take home pay and the problems or the perceived problems from the trade union movement that that might create and the Commission or Fair Work Australia will be placed in a position where it may consider an application from an employee and make appropriate orders it deems fit in the circumstances where there is a disadvantage in take home pay without in any way conceding whether that is or isn't the case so far as on a merit basis is concerned. It clearly is a matter that the union could take up under the new regime and the Commission need not concern itself with the submission made by the MUA in paragraph 25. Unless there are any questions, those are our submissions.

PN3717

JUSTICE GIUDICE: Yes, that's in relation to the whole of this area, I take it, Mr Warren, is it?

PN3718

MR WARREN: It's in relation - we obviously stand by the AFEI submission made with respect to the exposure draft and we note that that is the only issue it appears that the MUA has taken with the Australian Federation of Employers' submission and it's noted in paragraph 25 of their submission and their submission is a general submission which deals with a number of awards and in particular with the Port, Harbours and Enclosed Water Vessels Award, that is the submission made and is our response to that submission.

PN3719

JUSTICE GIUDICE: Thank you.

PN3720

MR WARREN: If the Commission pleases.

PN3721

JUSTICE GIUDICE: We might take any other submissions in relation to the Ports, Harbours and Enclosed Water Vessels Draft Award.

PN3722

MR HARVEY: Your Honour, in Melbourne - - -

PN3723

JUSTICE GIUDICE: Yes, Mr Harvey.

PN3724

MR HARVEY: Thank you, your Honour. Just very briefly, your Honour, the ASU has made a written submission with regard to this group of awards, but including the Ports, Harbours and Enclosed Water Vessels Award 2010 which is at pages 3 and 4 of our written submission of 12 June, we simply sought there an exclusion for local government employees.

PN3725

I notice in the written submissions of the MUA there is a line at the end of their submissions simply saying that they oppose our submission for the exclusion of local government, but don't expand on it any further and I think we should just desist with our application for an exclusion for local government employees without expanding on it any further. If the Commission please.

PN3726

JUSTICE GIUDICE: Thank you, Mr Harvey. We will deal next with - - -

PN3727

MR MCNALLY: Your Honour, can I - - -

PN3728

JUSTICE GIUDICE: Yes.

PN3729

MR MCNALLY: As Mr Warren submitted, the Maritime Industry General Award or whatever its name is going to be is confined to enclosed waters. The whole area beyond the coastline would be award free if the vessel wasn't a passenger or cargo transporting vessel, a tug, a dredge, et cetera, but that's the very reason why we propose the general award to cover all that's left such as pipe laying vessels and those types of vessels who work beyond the coast.



PN3730

JUSTICE GIUDICE: Yes. Thank you. We will deal next with the coal export terminals draft. Mr Morris.

PN3731

MR MORRIS: If the Commission please, I need to make a number of detailed comments on the content of this award because of the submissions filed on behalf of the CFMEU on 19 June which we haven't previously dealt with and which raise a lot of points going to content, but before going to the detail, can I make these general submissions?

PN3732

The employer group, the Coal Terminals Group, with respect accepts with the very limited exceptions that we deal with in our 12 June submission, the terms of the exposure draft. The main change that we sought was to the definition of coal export terminal that's dealt with in our submission and I don't repeat it. The second point is that there has been quite a deal of consultation between the employer group and the unions interested in the coal terminals sector and as a result of that, the employers have accepted quite a number of changes.

PN3733

Those were dealt with in our 24 May submission and our 12 June submission - sorry, 24 April submission and 12 June submission and with the exception of some that I will deal with, we don't accept the further changes that the unions are now proposing or in particular the CFMEU is proposing. The third point we make is that the CFMEU submission of 19 June has relied in numerous respects for supporting the proposal, the changes that it seeks to the exposure draft on the Stevedoring Industry Award and I refer there to I think the Stevedoring Industry Award, not the Stevedoring Industry Modern Award.

PN3734

What we say about reliance on the Stevedoring Industry Award is this. First of all that award has not applied over some decades, three or four decades the coal terminals have been operating, it has not applied to the coal export terminals. Furthermore, the Stevedoring Industry Award and its predecessors has not been used as a benchmark. It hasn't had a nexus with the coal export terminal terms of employment.

PN3735

It really is a late reliance on what we would say is an award that doesn't provide a proper benchmark or a proper starting point for the Coal Terminals Award. I say that submission at the beginning so that I don't have to sort of repeat it as we go through the various specific terms which the CFMEU has proposed relying in part or wholly on the terms of the current Stevedoring Industry Award.

PN3736

The next preliminary point I make or opening point I make is that the CFMEU in its submissions has relied in many instances on particular current coal terminal enterprise awards. The one that is most regularly relied on in the CFMEU submission is the Port Waratah Coal Services Enterprise Award. That is an enterprise award and what we say about that or any of the other enterprise awards is that again they don't provide on a sort of a cherry picking basis a proper justification for altering the terms of the exposure draft or, indeed, for setting standards in the award.

PN3737

JUSTICE GIUDICE: Despite the fact a lot of people are suggesting that they do.

PN3738

MR MORRIS: I am sorry?

PN3739

JUSTICE GIUDICE: Despite the fact a lot of people are suggesting they do.

PN3740

MR MORRIS: Yes.

PN3741

JUSTICE GIUDICE: There's been a fair amount of cherry picking on all sides.

PN3742

MR MORRIS: Yes, but I emphasise the point that it's one enterprise award. There are some seven current operators at coal export terminals on the east coast, that's Queensland and New South Wales and again one repeatedly finds the CFMEU's submission relies on that Port Waratah Coal Services Award or one or other of the awards and finally by way of opening comment, many of the CFMEU submissions of 19 June were covered in substance in submissions by the CEPU as far back as 6 March so we have proceeded on the assumption that those submissions that the CEPU put and which the CFMEU now in many instances repeats really have been considered by the Commission in developing and formulating the exposure draft.

PN3743

Now, if I could go then to the CFMEU's proposed changes to the exposure draft contained in its 19 June submission and I do have to spend a little time on these. I

will go as efficiently as I can. The CFMEU proposes some expansion of the definition of coal export terminal in clause 4.2. We've accepted that. That's provided for in our 12 June submission and is agreed.

PN3744

JUSTICE GIUDICE: Yes, I am looking at the CFMEU's submission. The structure of that appears that the left hand column is based on the exposure draft, is that right?

PN3745

MR MORRIS: Yes.

PN3746

JUSTICE GIUDICE: Yes. So any alteration which your clients may have conceded or thought appropriate in light of that submission won't be reflected in that document?

PN3747

MR MORRIS: That's correct. The left hand side is, that's right, the exposure draft. The middle column, whilst it's not uniformly the case, it's generally what the CFMEU contends for and the right hand column is sort of an elaboration by way of comment.

PN3748

JUSTICE GIUDICE: Yes. I'm just stating the obvious I think, Mr Morris.

PN3749

MR MORRIS: Sorry, the combined unions. I am corrected by the - - -

PN3750

JUSTICE GIUDICE: Yes. That's what the heading says, yes.

PN3751

MR MORRIS: Yes. Now, as I say, the CFMEU if one goes to clause 4.2, I'm sorry the combined unions, I'll get that right.

PN3752

JUSTICE GIUDICE: Yes.

PN3753

MR MORRIS: The combined unions don't actually suggest the change to the words defining a coal export terminal but we rely on the reference to minor or incidental work associated with the coal export terminals operations.

PN3754

VICE PRESIDENT LAWLER: They do propose a change, don't they? It's includes rather than is.

PN3755

MR MORRIS: I'm sorry, I still didn't hear you?

PN3756

VICE PRESIDENT LAWLER: They propose a change from the coal expert terminal is to a coal export terminal includes.

PN3757

MR MORRIS: Yes.

PN3758

VICE PRESIDENT LAWLER: Which is allowing for sort of a practical expansion on a case by case basis by reference to facts.

PN3759

MR MORRIS: Yes. Your Honour, we propose a different approach. In terms of the principle I think we agree to but our approach, if I could just go to it, would be to add, and this is in our 12 June submission, the words after where it says - I'm sorry, I'll read the whole clause:

PN3760

A coal export terminal is a facility that receives and stockpiles coal and loads coal onto vessels for export and which does not deal with other cargo or undertake other port activities.

PN3761

That's the exposure draft. We propose to add the words and I quote:

PN3762

Unless such cargo or activities are of a minor nature or incidental to that facility's activities relating to the receipt, stockpiling and loading of coal.

PN3763

And we explain why we seek that. One or other of the terminals may from time to time handle a very small amount of slag or coke I think in the case of Port Kembla Coal Terminal, and we don't want to inadvertently exclude the coverage of maintenance work, for example, on plant or infrastructure that is carried out by a coal export terminal but may not be strictly speaking the receipt, stockpiling and loading of coal. I thought that was going to be the easy part.

PN3764

Then the next change of substance proposed by the CFMEU is a new clause - I'm sorry, by the combined unions is a clause 9.A providing for employee representative leave. That is opposed. It does not presently exist in any of the Coal Export Terminal Awards with the exception of the enterprise award for Port Waratah Coal Services and the unions here have relied on that award and the Stevedoring Industry Award. So we say it isn't a feature of the industry, it should not now be introduced. The next change proposed by the unions is in clause 10.3(b) where the combined unions propose a clause providing for conversion of casuals to permanent employment - I'm sorry, I will withdraw that.

PN3765

10.3(b) is a proposal that the minimum engagement for a casual should be seven hours. That's not a feature of any of the current instruments applying. The employers have previously agreed to a four hour minimum engagement for casuals. There's just no basis for a seven hour minimum engagement. Then 10.3(d) is a proposal by the unions for conversion of casuals to permanent employment. That again doesn't apply in any of the ports at the moment and it should not be included in the new award. The unions rely on the Manufacturing Award and Building and Construction Modern Awards. That is opposed.

PN3766

Then the next item is clause 11 where the unions appear to contend for the inclusion of provisions about employee duties and so that was a clause in the draft

filed in the proceedings. We know the Commission has withdrawn those generally from its exposure drafts and the employers don't seek that it be included. So to the extent that the unions are opposing it we don't find ourselves in support of that. We are content for it not to be there. Then clause 11.2, here the unions seek that the notice required by an employee of termination of employment be one week, whereas the exposure draft provides for a symmetry of notice, leaving aside the extra week for employees over the age of 45 whether the termination is by the employer or the employee.

PN3767

Again the employers oppose that change and the provision in the exposure draft it is submitted by the employers is appropriate. Clause 12, redundancy is the next area where the unions propose a change. They propose redundancy provisions in excess of the National Employment Standards. The union proposal is opposed by the employers. There is currently no redundancy scheme applying across the industry and we submit, with respect, that inclusion of a redundancy provision in excess of the NES would run counter to the intent of paragraph 36 of the Minister's Request as to when redundancy provisions should be included.

PN3768

I then come to clause 13, classifications and minimum wage rates. The rationale for the employer proposal which has been reflected in the exposure draft was set out in the employer group's 6 March submission. We dealt with it in some detail and explained how we had arrived at it. The employers did indicate they were willing to consider alternatives in consultation with the unions. Those consultations occurred. Agreement hasn't been reached. The employers submit that the exposure draft provisions are appropriate and the testing of those in the consultations that we've had with the unions has reinforced us in that view.

PN3769

We say the unions' proposal is not appropriate and is not an appropriate alternative and we just make these comments by way of a critique of the unions proposed classification structure. First of all, the unions propose that the entry level for all employees whether they're trades or non trades should be equivalent to the C!0 in the Manufacturing Award. Again there's just no justification advanced for that. Secondly, the union proposal assumes that trades and non trades' personnel should have identical progression, there should be no differentiation. Again, there's nothing really put in to justify that. The employer proposal juxtaposes or aligns trades and non trades and we submit that that employment proposal which is now in the exposure draft is fair, it's practical.

PN3770

Thirdly, the unions argue for larger increments between the wage rates for the classifications. Again there's no real justification put for that and we submit that what's in the exposure draft establishes an appropriate progression in terms of increments between the classification levels. The next matter that we think is inappropriate in the union proposal is that it introduces at the higher levels of its proposal and these can be seen in the unions submission, it starts to include in the higher classifications really what are job titles such as wharf foreman, control room and then relief coordinator, relief supervisor, project officer and so on, or contract coordinator.

PN3771

What we say about that is that those are job titles that one or other of the terminals may have but others just don't and one confuses a classification structure which is generic when one starts to include job titles in it. The modern award has a generic - sorry, the exposure draft has a generic classification progression which accommodates people regardless of their title and we say that's the appropriate approach, with respect, and it simply confuses the structure when one starts to include these job titles which a terminal may or may not have. And again one notes on that page of the unions' submission table after the classifications there's a reference to SIA, clause 10.1. That appears to be a reference to the Stevedoring Industry Award which again we'd say is unhelpful and has seven grades but it tells us very little else.

PN3772

So for all those reasons and for the reasons that we've put in support of our submission on 6 March, we strongly submit that the exposure draft classification structure should be adhered to. If I could then go to clause 13.2 which provides for the frequency of payment of wages, the unions have sought weekly payment of wages as the standard. Initially we proposed monthly. We have accepted fortnightly. That was accepted in our 22 April - sorry, our 24 May submission - sorry, I will get that right in a moment, 24 April. So we have moved from monthly to fortnightly. We submit that fortnightly is entirely reasonable.

PN3773

The unions have also sought the deletion of clause 13.3 of the exposure draft which enables an employer to deduct overpayments from subsequent payment of wages or allowances. The employers oppose the removal of that subclause. We say it's a sensible one, it appears in a number of modern awards, it reasonably enables an employer to recover overpayments without complicating issues of being in breach of a modern award in the future. Then clause 13.4 the unions have sought that adult apprentices be provided for. The employers accept that. We accepted that in our 12 June submission. We accepted the percentages in effect that the unions have proposed.

PN3774

We submit that there should be a short definition of an adult apprentice being an apprentice who commences his or her apprenticeship at the age of 21 or over. Then the next item on the unions' submission is in relation to clause 13.5 and the supported wage system. The unions argue that there should not be such a provision in this award. The employers are not opposed to its inclusion. If it's in the award it operates according to its terms. If it's not appropriate for particular work then it will have no work to do.

PN3775

Then the unions submission, and I'm using its ordering now, proposes that overtime be provided for in clause 14. It is clause 18 in the exposure draft. The unions' submission proposes a number of changes to the overtime provisions. All of those changes are opposed by the employers. The employers accept the exposure draft. The precise reasoning of the unions is not very clear. We'd say it's not clear at all, but it's apparent that they rely repeatedly on the Stevedoring Industry Award. As you'll see in the middle column there's regular reference to

SIA clause 19.2 or clause 19. I have made my submissions already about the invalidity and lack of justification for relying on the Stevedoring Industry Award.

PN3776

The unions rely also again on the Port Waratah Coal Services Award and I have made submissions about that already. Overall what the unions appear to be seeking is just a lifting of a number of the penalty rates. We submit for the reasons we have put in our initial submissions on 6 March that the overtime provisions are appropriate. If one goes then to clause, this is in the unions' submission; it's over a couple of pages. At the bottom of the prior page it's clause 18, 18.2, 18.4 and then over the page there's (b), where the employee does not get a 10 hour break. The unions propose that the reference in the second dot point in paragraph (ii) and the third dot point in paragraph (iii) should be changed from reference to the word ordinary to the word rostered.

PN3777

I'm happy to say that that was a change that the employers indicated in their 12 June submission they accept. Then clause 18.5, which is what the unions would propose as clause 14.4, there's reference to call back provisions. The employers oppose any change to the exposure draft there. There's really no basis put forward for the changes other than again the Stevedoring Industry Award or the Port Waratah Coal Services Award and for example, the unions propose that where an employee is called back to work overtime he or she should be paid a half hour travel time. That is just simply not a feature of this industry with I think the one exception of again, Port Waratah Coal Services.

PN3778

Perhaps I should just pause at this point just to note, if it needs noting, that as an enterprise award the Port Waratah Coal Services Award will continue to apply and this award will not apply while that enterprise award applies.

PN3779

JUSTICE GIUDICE: Mr Morris, if that's a convenient time we might adjourn now for lunch and we'll resume at 2 o'clock.

<LUNCHEON ADJOURNMENT [1.01PM]

<RESUMED [2.07PM]

PN3780

JUSTICE GIUDICE: Yes, Mr Morris.

PN3781

MR MORRIS: If the Commission pleases. Might I make one correction to what I put before lunch, it relates to clause 13.2 and the frequency of payment of wages?

PN3782

JUSTICE GIUDICE: Yes.

PN3783

MR MORRIS: I said I think before lunch that we had agreed to move that to fortnightly in our April submission. In fact it was our 12 June submission.

PN3784

JUSTICE GIUDICE: Yes.

PN3785

MR MORRIS: There's been so many submissions. The next provision in the union submission I want to deal with relates to the superannuation clause, that's clause 15 in the exposure draft. There, as we say in our 12 June submission, we would accept the reference to further specific current superannuation funds in clause 15.4 and I understand Ms Gray will be tendering the names of some further funds. As I say, we're happy with those insofar as they are presently funds that are receiving employer contributions.

PN3786

Then if I could turn to clause 14 in the exposure draft and the various allowances and the submissions that are made by the unions in respect of those. By way of opening, our 6 March submission explained the approach of the employers in relation to allowances. Essentially we sought to only include allowances that were in common usage across the terminals and not include allowances that only had a scattered operation in one or other or maybe a couple of the terminals. So generally we submit that the exposure draft allowances are sufficient and appropriate.

PN3787

The allowances then specifically referred to by the unions, they refer first to the tool allowance and they propose an allowance based on the Port Waratah Coal Services Award. We say that's not a proper basis to deviate from the exposure draft. Then the next one is the licence allowance. The exposure draft provides for reimbursement of the cost of licences which are required. That is, we say, appropriate and there's no justification for introducing licence allowances of the kind that might appear in the Stevedoring Industry Award or indeed in the case of Port Waratah Coal Services Award which is relied on by the unions, it appears to be a reimbursement provision. We submit again, no need to deviate from the exposure draft.

PN3788

The meal allowance, we say the allowance in the exposure draft is appropriate. There's no cause to adopt any other allowance. The allowance that is in the exposure draft matches that in the Manufacturing Award and, as one would see from the middle column of the unions' submission, allowance are all over the place in terms of quantum, if anything, our allowances at the upper end of what's currently in use.

PN3789

First aid allowance, over the page in the unions' submission, the Commission has included an allowance in the exposure draft. It was what we submitted for in our 6 March submission. There's no cause to increase that and again, the allowance in the exposure draft matches that in the Manufacturing Award, modern award that is.

PN3790

Then protective clothing and equipment allowance, again we say there's no cause to move away from what's in the exposure draft. The union has relied on stevedoring and again there just doesn't seem to be a case to make any change.

PN3791

Then the unions propose, and for this I think you need to go back a little earlier in their submission. They propose an industry allowance of 5 per cent. That's on the page where clause 14.2 of the exposure draft is set out in the left-hand column. In the right-hand column there's reference to all purpose industry allowance of 5 per cent to compensate for common disabilities. That's not supported by the employer group. We say there's no particular justification for 5 per cent or any other particular figure and again, so far as the unions rely on the Stevedoring Industry Award, not a proper benchmark or starting point.

PN3792

Then if I can go forward in the union submission, there's a proposal for a leading hand allowance - sorry, that's under the all purpose industry allowance I was making submissions about a moment ago. The employers oppose a leading hand allowance in this award and we do that because the classification structure in the exposure draft supported by the employers provides in each of the levels, as one goes up the classification ladder, for supervision of employees, supervision of work. In other words, supervision or leading people is built into the requirements of the classifications and the descriptions of the classifications and the requirements for classification. With respect, a leading hand allowance might make sense where you have jobs that don't have a supervisory requirement, but we say it's really double-counting if your classification already takes account of supervisory responsibilities. You don't then add a leading hand allowance because someone is then doing what the classification itself contemplates. Leading hand allowances are very much the exception currently in the coal terminals.

PN3793

Then going to the next page in the unions' submission, across the page from where it says clause 14.7 in the left-hand column, there's reference to other allowances such as laundry allowance, vehicle allowance, travel allowance, other allowances specific to the industry. In our submission again there is no justification for those at this stage. The CEPU back in its March submission sought various additional allowances. There's really no cause to have those included at this stage and again the union relies, opportunistically we'd say, on the Stevedoring Industry Award and the Port Waratah Coal Services Award. Summing up on allowances, our submission is that the exposure draft includes the right allowances and no further allowances should be included in the modern award.

PN3794

If I could then move off allowances to clause 16.1, averaging of ordinary hours, the exposure draft provides for shift workers' ordinary hours to be averaged over the cycle of a roster or up to 26 weeks. We submit that's appropriate. The unions propose 10 weeks. We submit that 26 weeks is not unreasonable in the circumstances. There are other industries, mining, coalmining where 26 weeks is the period used for averaging. We had previously agreed that for day workers the averaging should be over four weeks. that was in our 24 April submission and again the averaging of hours was dealt with in the CEPU's 26 March submission which was prior to the exposure draft.

PN3795

Then clause 16.2 the provision in 16.2(a) for the span of hours for day workers, the exposure draft provides that day workers' hours can be between 6 am and 6 pm Monday to Sunday. The unions submit from 7 am to 5.30pm Monday to Friday. We submit that the exposure draft is appropriate there. There's no cause to move from what is a not uncommon provision for day workers. As it happens, at present the earlier starting point in any of the terminals presently for day workers is 6 am. The latest finishing time for day workers appear to be 5.30 pm so six to six is a not unreasonable safety net provision.

PN3796

The unions propose then in clause 16.3(iii) a new definition of dayshift. We don't support that. It's unnecessary. Nightshift and afternoon shift are defined and a shift that's not an afternoon or a nightshift must be a dayshift. We note that, for example, in the Mining Award, modern award, the dayshift is not itself defined.

PN3797

Then in clause 16.3(b) shiftwork rates, the unions propose various increases, higher loadings that is for various shifts. They rely again on the Stevedoring Industry Award and the port Waratah Coal Services Award. We submit that the exposure draft should not be departed from, we do make this one perhaps qualification to that. The exposure draft provides for a shift worker or continuous shift worker whilst on permanent night shift being paid a loading of 25 per cent of the ordinary hourly base rate of pay. We would not oppose that being 30 per cent. We I think used as a reference point initially in our submissions on this the Mining Industry Award and we note that a permanent night shift worker appears to be 30 per cent.

PN3798

Clause 16.4(c), roster and shift changes, the unions propose to vary or propose the variation of the exposure draft by increasing the notice period from 48 hours to seven days. We submit that the 48 hours is reasonable. It matches the Mining Industry Award, then clause 17 - - -

PN3799

SENIOR DEPUTY PRESIDENT HARRISON: Mr Morris, I should comment that we never used the Mining Industry Award as some justification. I then remember what you're criticising the union about in their cherry picking, but continue to do so.

PN3800

MR MORRIS: I was using the Mining Award as the Modern Mining Award as being an award that covers obviously a vast industry and includes amongst other things the bulk commodity ore loading in iron ore, for example, and in our initial 6 March submission we made reference to that. There is some similarity between what a coal terminal does, loading coal onto ships 24 hours a day, seven days a week, using highly automated gear at the coal terminal and a iron ore loader, that was really the - so the extent that we've been selective in that, we've been consistently selective.

PN3801

Then if I could go to the clause concerning meal breaks or breaks, clause 17, the exposure draft provides for and this is in 17.2 for 20 minutes per shift and in 17.3

40 minutes per shift. In our 12 June submission we accepted that the 20 minute should become 30 minutes in 17.2 and the 40 minutes should become 60 minutes in 17.3, then clause 19.2, leave entitlements, the exposure draft provides for annual leave to be in accordance with the NES.

PN3802

The unions propose an additional week's leave in effect so that continuous shift workers would get six weeks and non-continuous shift workers or day workers would get five weeks. Indeed, I think they may say all shift workers should get six weeks. We submit that there is no cause to provide for an enhancement on top of the NES.

PN3803

Some terminals do provide more leave, others don't and it's properly a matter for enterprise agreements or bargaining, then in clause 19.4(a), the annual leave loading, the exposure draft provides for a loading of 17.5 per cent. The unions propose it appears 20 per cent and again they rely on some particular enterprise awards. We submit that the common standard of 17.5 per cent is appropriate and should not be departed from.

PN3804

In clause 19.6 there's provision for the taking of annual leave during annual shutdowns or during shutdowns, rather. The exposure draft provides for - does not provide for a notice period for that. The unions propose a minimum four weeks' notice before a shutdown when employees are required to take annual leave. The employers accept that and we put that in our 12 June submission, so we would agree to that notice period being required.

PN3805

Then clause 19.7 which is a provision enabling the employer subject to certain preconditions to require an employee to take leave where a very substantial accrual of leave has occurred for a particular employee and the exposure draft provides that - this is in 19.7(a), at the time of the direction the employee has eight weeks or more of annual leave, the unions have proposed that it be in the case of employees with an entitlement to five weeks' annual leave a year that the trigger, if you like, or the threshold when the employer can require this leave to be taken should be 10 weeks.

PN3806

We put this in our 12 March submission, so we accept in effect that the threshold or trigger for the obligatory taking of leave at the direction of the employer arises when the employee has accumulated a total of two years of leave, then clause 20, personal and carer's leave and compassionate leave, here the unions propose 13 days personal carer's leave, in other words three days more than the NES.

PN3807

We submit there is no case made for that. There's some employers who provide presently more, others don't provide more than the NES and it should not become a general standard safety net provision and the NES is appropriate. Likewise in respect of compassionate leave, the unions propose that there should be not two days on each occasion as provided in the NES, but three days. Again some enterprise awards provide for three days, others don't and again there is no justification for generally requiring as a safety net provision more than the NES.

PN3808

Can I then turn to schedule A? The unions have proposed a new schedule A, clause A.1.2 which is a set of provisions relating to training and how training is to be afforded and how it's to be treated. The exposure draft didn't include such a provision. We oppose its inclusion now. We say training is properly a matter for local arrangements and local agreements and does not require and does not justify a safety net provision and then if one goes to the clause A.1.2 in the exposure draft, so that's in the left-hand column, there's provision in relation to progression.

PN3809

The unions appear to be saying in the middle column that progression above level 3, competent, will be on appointment. There doesn't seem to be a difference between us. Of course, we have a different classification structure from what the unions are proposing, but I think I can leave that, then I've made submissions already when I was dealing with clause 13 I think it was about the classification structure that we think there are a number of features of what the unions are proposing in the classification structure that are inappropriate.

PN3810

One I perhaps didn't deal with earlier relates to mixed functions. The unions have proposed in their middle column, A.1.4, a mixed functions clause. We say that it's inapt or inappropriate to have a mixed functions clause where you have a generic classification structure, rather than job titles. The structure contemplates that people work to the limit of their skills and competence and perform all the work that might be required at a lower level and all the work required at their level.

PN3811

Putting in a mixed functions clause in a grading system, particularly where appointment is required to grade to the higher levels, is just going to be a cause of confusion and if you look at our classification structure which has the competent, the advanced, the dual trade, there's just no work for a mixed functions clause to do that in that structure so we submit that a mixed functions clause just is inappropriate and then finally the unions' proposal refers to particular job positions and we submit that that's inappropriate.

PN3812

By positions I mean particular titles, so we strongly support the current structure of the exposure draft. Those I think are the submissions we make. If the Commission pleases.

PN3813

JUSTICE GIUDICE: Thank you, Mr Morris. Ms Gray.

PN3814

MS GRAY: Thank you, your Honour. Your Honour, I note that Gladstone Port Authority didn't put in a submission in respect to the export coal terminals exposure draft in the latest round and I was wondering if it might be more economical if Mr Herbert who is representing them today just indicates if there's any submissions to make in respect to that award and then I can cover any response to that in my submission, but I am happy to go ahead before him. I just may need to jump again after him.

PN3815

JUSTICE GIUDICE: What do you think about that suggestion, Mr Herbert?

PN3816

MR HERBERT: I'm happy to co-operate.

PN3817

JUSTICE GIUDICE: Very well. Thank you.

PN3818

MR HERBERT: Your Honour, I didn't announce an appearance in this matter, although what I have to say about the Port Authorities Award is in a sense a mirror image of one thing that we do have to say about the Coal Terminals Award. The only thing that Gladstone Port Authority really has to say about the Coal Terminals Award is that it should continue not to apply to it and that the way in which the Commission has presently arranged the terms of the respective exposure drafts of the Port Authorities Award and the Coal Terminals Award is that they are neatly and logically mutually exclusive as they should be and the Gladstone Port Authority as a port authority properly so called, similar to many other port authorities around Australia give or take various mixed of functions, is contained on the appropriate side of the dividing line between those two awards, that is firmly and squarely on the side of the Port Authorities Award.

PN3819

The Gladstone Port Authority is content with all of the other terms and conditions proposed for the Port Authorities Award and in particular clause 4.1 of the exposure draft that lists that - it specifies that the award covers employers who are port authorities to the exclusion of any other modern award. It follows that if the Port Authorities Award is to stay in that form, the alterations proposed as we submit it should for all of the reasons that were put in, in the earlier submissions on behalf of the Gladstone Port Authority and in that respect if I can say - Gladstone Port Corporation, I should say, in that respect can I say that the submissions by the CFMEU in response to the exposure drafts put nothing new in factual terms.

PN3820

All that is asserted again is that there is nobody at Gladstone Port Authority who is exclusively devoted to coal operations. There are a number of employees who are predominantly engaged in the loading of coal. There are a very much larger number of employees who have nothing whatsoever to do with coal and are a group in the middle, particularly the maintenance employees who work across the entire facility, everything that Gladstone Port Authority does from front to back and stem to stern and because of that amalgamated situation and the aggregated situation constituted by the workforce and the flexibilities that are able to be drawn from the present situation, it's earlier been submitted and accepted by the terms of the exposure draft that Gladstone Port Authority should not be required to be disaggregated in its respective functions simply because the CFMEU wants to take part of its functions away and put it under another award, but in order to facilitate that approach, as I understand matters, could I refer the Commission to the submissions of the CFMEU and in particular the spreadsheet setting out proposed award changes in relation to the Coal Terminals Award that Mr Morris has just gone through very recently and can I refer the Commission to the curious terms of the proposed clause 4 of the CFMEU or the unions' proposal as to how clause 4 of that award would read if the CFMEU was to have its wishes in this regard.

PN3821

If the Port Authorities Award is to stay in its current terms, that is it applies to the exclusion of any other modern award, a variation of the terms sought to the Coal Terminals Award would set up an immediate tension where in fact by the terms of the CFMEU proposed amendments, that the Port Authorities Award would not apply to the exclusion of any other modern award, even though it's said that it does, because this proposed award would apply to port authorities as well, so that the neat mutual exclusivity achieved by these current terms of the two exposure drafts would immediately be lost, but the terms of clause 4.1 as proposed by the CFMEU suggests that the award covers employers who operate coal export terminals in respect of work by the employees in classifications and to the exclusion of any other modern award.

PN3822

Now, essentially what that would mean is that Gladstone Port Corporation would be covered because it operates a thing which is defined in clause 4.2 as being a coal export terminal and being the Tanner terminal that's been described in the material, so that this award would operate in relation to Gladstone Port Corporation to the exclusion of all other modern awards, despite what the Port Authorities Award says, that it doesn't.

PN3823

The definition in 4.2 of a coal export terminal is as Vice President Lawler pointed out earlier, has a subtle, but very important change. The word is has been changed to the word includes, that it does permit the possibility of future debates and arguments about the possible creeping coverage of this award over other facilities such as Gladstone Port Corporation and like facilities. It defines the coal export terminal as including facilities of receiving stockpile coal and as I submitted earlier, Gladstone Port Corporation along with a number of other port operations does have such a facility so it would be caught by clause 4.1 and 4.2. 4.3 however goes on to say:

PN3824

The award does not cover an employer who is covered by the Port Authorities Award.

PN3825

Well, it would seem from 4.1 that that provision is not necessary because it excludes other awards anyway. But it goes on to say:

PN3826

Except as otherwise covered by 4.1 or 4.2.

PN3827

Now, frankly my client doesn't understand that and I can't explain to the Commission how that would work. Presumably the intention is what was submitted by the CFMEU in April of this year in a written submission that what they intend is that the Port Authorities Award can cover everything in Gladstone except the coal terminal. The problem with that is the coal terminal is a place. It is a place of work. It is not an identifiable group of employees and given the structure which has even been asserted by the CFMEU in its recent material, that coal terminal has a rotating workforce of employees who move in and out and work in other places of the Gladstone Port Authority's operations.

PN3828

In some cases they work in the coal terminal one week in four. Some places they work predominantly there but do other work in other terminals. Some employees who do maintenance rotate in and out on a daily or hourly basis and some employees never go there at all. Now, for that reason it would seem that these clauses would appear to set up a circular inclusion and exclusion which doesn't make a great deal of sense except that it would appear that there would need to be something in the nature of a Bundy clock installed at whatever entrances are available for the coal terminal and as employees go in and out they have to punch the clock as to the amount of time they spend in the coal terminal area so that the award will apply to them when they're in it but it won't apply to them when they're out of it.

PN3829

As I say, that may well alter on an hourly, weekly or monthly basis. That of course, if that is what is intended and it's not at all certain that that's what the words say, that would be a nonsensical outcome in the context of the award modernisation process and the intention to simplify matters and to bring, as far as can be done, employers who have overall operations under the umbrella of a single award and in the context of award modernisation process which really encourages this Commission to do precisely what it has done in this case and that is to characterise employers by reference to their overall activities and the industry in which they sit and to make award regulation which is suitable to their overall characterisation and the industry in which they sit.

PN3830

The Commission has, as I have submitted, landed precisely on the point in relation to this particular matter by granting mutual exclusivity as between port authorities properly so called and privately owned coal terminals who effectively do nothing but. The CFMEU proposal would be to rub out all of those lines and to create an enormous smudge mark, as it were, within the operations of Gladstone Port Corporation for reasons that aren't entirely clear. It certainly won't promote any form of efficiency. It won't promote simplicity and it won't promote the objective of reducing the number of awards that apply. It really would apparently suit the interests of the CFMEU only without serving any other particular objectives.

PN3831

Now, for those reasons it is submitted that the proposed alterations to the Coal Terminals Award in terms of clause 4 coverage provisions should all be rejected by the Full Bench and that the respective coverage clauses of each of the awards, that is the Port Authorities Award and the Coals Terminal Award, be left precisely in the exposure drafts, be left precisely where they are and that the CFMEU's submissions to the contrary be rejected. Unless there's anything further those are the submissions that Gladstone Port Corporation would wish to make in relation to the relationship between those two awards and what the Commission should do in respect of that issue.

PN3832

Gladstone has nothing else to say to anticipate matters when the Port Authorities Award matter is formally called on. Gladstone Port Corporation has nothing further to say in relation to the terms of that award. It is content to accept the

terms of the award as presently placed or as presently drafted and save and except that in the case of some unions having made submissions to the effect that wage rates ought to be taken from particular awards that have been identified and the Victorian Ports Award is one in particular that was identified as being a potential source of wage rates.

PN3833

The simple submission that Gladstone makes about that matter is that the Queensland Port Authorities Award NAPSA wages and conditions ought to be those which are contained within the award but otherwise leaves the matter to the discretion of the Commission. The question as to how one moves from whatever might be the existing rates of pay that port authorities throughout Australia are currently paying and the Gladstone Port Corporation are currently paying vis-à-vis the rates which are ultimately inserted in a final modern award will be a matter in my submission for the transitional provisions that might apply and are not matters in respect of which the Port Corporation wishes to be heard at this time. Unless there's anything further, your Honours and Commissioner, that's the submission for Gladstone Port Corporation.

PN3834

JUSTICE GIUDICE: Thank you. Ms Gray.

PN3835

MS GRAY: Thank you, your Honour. I might start with the uncomplicated part which is that I have provided to the Full Bench's associates a document headed Export Coal Terminals Existing Superannuation Funds to which Mr Morris has referred. There are already two superannuation funds mentioned in the exposure draft. We say that the four listed in this document completes the default funds currently existing at coal terminals. We note that it also includes Gladstone Port Authority as the bottom one. We have that there for completeness and with the optimism that our arguments in favour of having Gladstone Port Authorities coal termination operations brought within the scope of the Export Coal Terminals Award would be successful when the award is finally made.

PN3836

We note that Mr Morris has no objection to that list of funds which I provided to him earlier today and we also note that we've conferred with Ms Angus of the AWU there is no default fund existing at Dalrymple Bay. Also in respect to the AWU Ms Angus was unable to, due to other work commitments, remain this afternoon. She has asked me to advise the Full Bench that the AWU supports and accepts and adopts the submissions of the CFMEU lodged on 19 June. We then move on to conditions. We have very little extra to say because it has been covered in our submissions. In terms of the table there was an error which is the key at the top of the table which refers to the existing industry awards has next to PWCS Port Waratah Coal Services that Port Waratah Coal Services Consent Enterprise State Award 1995 that in fact the conditions which are cross referenced in our document are to the Port Waratah Coal Services Consent Enterprise Award 2002, a federal award.

PN3837

We note that Mr Morris has relied heavy - well, not heavily, has relied at various times on the Mining Industry Award as commented on by her Honour SDP

Harrison. We would suggest that conditions were not taken from the existing enterprise awards would be more appropriately taken from the Black Coal Mining Industry Award and in respect to that we refer to our submission which was made in support of the priority issues. Unfortunately we were unschooled in the modernisation process at that time and did not date it, but it is contained on the website under Initial Priority Issues May through to June 2008. In that we draw the comparison or connections between coal mining and coal ports and in particular at paragraph 24 we outlined the various coal supply chains which are associated with the coal export ports and in respect to that it identified the regions of coal mining which supplied each of the ports.

PN3838

The second last dot point referred to the Blackwater Gladstone coal chains which supply to Gladstone Port Authority. On conditions, as I say, we have covered that in our submissions. Just briefly, Mr Morris said that the seven hour minimum engagement or one shift minimum engagement for casuals being sought by the combined unions was not a common provision across the existing enterprise awards. That comes as no surprise because the Bulk Terminal Services Bulk Handling Award 1998 and the Hay Point Award don't provide for casuals at all. The Port Waratah Coal Services Award does provide for casuals and has a seven hour minimum engagement, seven hours being a shift under that award being a 35 hour week.

PN3839

In terms of the maximum period for the roster cycle, although the employers are seeking 26 weeks maximum the rosters currently existing at all of the coal terminals have a maximum of 10 weeks and in terms of annual leave we note that Port Waratah Coal Services provides five weeks annual leave with a 45 per cent loading. The Hay Point Award provides for five weeks with 20 per cent loading and six weeks for shift workers and the loading under the Stevedoring Industry Award is 27.5 per cent loading. Although Mr Morris says that the Stevedoring Industry Award is irrelevant, we refer to the submission of the MUA in respect to the modern Stevedoring Industry Award, the exposure draft, and note that an exclusion is proposed with which we agree for the Coal Expert Terminals Award 2010 and is done so on the basis that the loading of coal or fuel oil whether the bunkers or not was included in the Stevedoring Industry Act 1949 as stevedoring operations, that's on page 2 of the MUA's submission of 12 June.

PN3840

We do agree with Mr Morris that since coal ports have become the type of operation which they are today that it is true that the enterprise awards rather than Stevedoring Awards have applied there and that is why we in our submission cross referenced existing conditions from the existing enterprise awards to reflect what is prevalent across the industry and to enable the Full Bench to identify the source that the combined unions claim. I note that your Honour the President had perhaps slight scepticism in your Honour's voice when referring to the combined unions' counterproposal as being the title of the middle column in the CFMEU's submission.

PN3841

I do submit that the CFME Mining and Energy is the coordinating union by the ACTU in this industry. The same process which I referred to in the electrical

power industry last Friday in Melbourne was conducted by the CFMEU Mining and Energy in this industry as well and we have active and consistent participation because of that inclusive and full information process of ourselves, the MUA, the AWU, the AMWU and the CEPU. I note with some concern though that the AMWU appears to have made consistent submissions in the last round of submissions on the exposure draft to the effect that the Manufacturing Industry Modern Award classification structure should be essentially inserted into virtually every other modern award.

PN3842

Mr Guy Noble from the national office of the metal workers was present and involved in the negotiations on the coal export terminals proposed award and the only concern raised by the AMWU different from the other unions was the level of the allowance claimed in respect to first aid. Our submission deals with that by incorporating that AMWU concern that where coal terminal employers do not enable virtually every employee to be trained in, for safety reasons, first aid and receive the lower amount which we claimed but rather only have a selection of employees trained, then the appropriate percentage should be 2 per cent rather than the lesser amount which we had been satisfied with on the basis of existing provisions being essentially a multitude of employees or anyone who wished to be trained receiving that allowance upon completing the training.

PN3843

JUSTICE GIUDICE: Ms Gray, I hope you didn't misinterpret my exchange with Mr Morris earlier. I wasn't sceptical at all about the CFMEU's role in coordinating the other unions. The purport of my remark was actually directed to the fact that I had asked him a question without looking at the title at the top of the columns.

PN3844

MS GRAY: Thank you, your Honour.

PN3845

JUSTICE GIUDICE: Which I should have done and I wouldn't have had to ask him the question.

PN3846

MS GRAY: And sometimes it's a little difficult for us to believe that there is a combined union position with the constituent unions but nonetheless that has been achieved in this case. We also handed up another document to the Full Bench's associates which is headed the Combined Unions Coal Export Terminals Proposed Classification Structure. Your Honours and Mr Commissioner, when the Full Bench made the exposure draft for this industry the only draft award it had was the employer draft. Unfortunately we had a choice between comparing a draft or negotiating with the employers on their draft and time and resources being stretched, as they are by everyone in this process including the Commission, we chose to negotiate with the employer and we did so the first meeting being able to be held on the closing date for draft awards to be put into the Full Bench.

PN3847

So we're saying that the Full Bench has had the employers draft, that employers draft was amended after early meetings that the unions had with the employers and further concessions in respect to the claims which have been pursued by the

unions with the Coal Terminals Group have been referred to by Mr Morris and put into their written submissions. So we commend the combined unions counter proposals and the basis upon which they have been made for terms and conditions and have nothing further to add about terms and conditions which brings us to the scope.

PN3848

This is an area which the union has made a number of submissions, particularly directed towards Gladstone Port Authority. We note that as a result of the submissions of the Coal Terminals Group initially and Gladstone Port Authority that what the Full Bench was appraised of was a - by the Coal Terminals Group was that their operations only dealt with coal. In the main that's true but there are exceptions and those exceptions have led to the proposed amendment to the scope clause now being sought by the Coal Terminals Group. On the other hand, Gladstone Port Authority has put to the Full Bench consistently that their operations are quite different to the other coal terminal operators. We have addressed those differences and demonstrated that in fact - although it was glossed over by Mr Herbert - there is at least a group of employees who do nothing but work at R G Tanner or Barney Point at Gladstone Port Authority. That is 180 production employees and the majority of the tradespeople who perform the majority of their time on coal, but certainly the production people, the 180 people referred to in our submission of 19 June do nothing but coal, except for a load of calcite once every three to six months.

PN3849

When the Full Bench published the draft Coal Export Terminals Award, it did so on the basis of the information that it had at the time. It said in paragraph 170 of the statement of 22 May:

PN3850

The draft award is confined to coal export terminals where the loading of coal for export is the only port operation undertaken.

PN3851

Certainly the Gladstone Port Authority has listed a screed of other functions which it says it undertakes. We heard this morning in respect to the Dredging Industry Award that only Brisbane and Newcastle ports actually perform the dredging operation and yet at paragraph number 35 of the Gladstone Port Authority submissions on 17 April it referred to it having responsibility for the harbour, marine, land reclamation and dredging activities. We don't doubt that it has responsibility but it doesn't perform them. I've been up and done an inspection of Gladstone Port Authority and were shown around by the manager and had it explained to me in recent weeks and certainly a number of the functions which were referred to by Gladstone Port Authority are conducted through contractors as is the case at other coal ports. Port Waratah Coal Services and Port Kembla Coal Terminal both look after vessel management, land development on their own lease sites and the port users at Port Kembla also share dredging costs with the Port Corporation.

PN3852

The same can be said and I only did a comparison between Port Waratah Coal Services, Port Kembla Coal Terminal and Gladstone Port Corporation's areas of

activities but it is true to say that either or both Port Waratah Coal Services and Port Kembla Coal Terminal, the functions outside of coal loading, unloading, blending and stockpiling are also conducted which are referred to by Gladstone Port Authority in its submission of 17 April are also conducted by the operators of the coal terminals at Port Waratah Coal Services and port Kembla Coal Terminal in respect to paragraphs 17, 19, 20, 35, 40, 43 and 44 of Gladstone's submission of 17 April.

PN3853

We say two things, your Honours and Mr Commissioner, that is that coal is not the only product loaded at Port Kembla Coal Terminal. There's about 4 per cent of product that is something other than coal and the functions which Gladstone Port Authority has submitted distinguish it from the operators of the coal terminals are performed in the main at other coal terminals as well where those operators have the lease of the coal terminals from the relevant port authorities in each case.

PN3854

We also have referred in our submissions in April to the expansion of the R G Tanner coal terminal. What we didn't know at that stage but we have subsequently found out is that 50 per cent of that expansion was funded by the coal companies whose product is exported through Gladstone Port Authority. We also note that Gladstone Port Authority stated in its submissions that it may not utilise Barney Point for coal exports in the future, although its annual report stated that the combined throughput at Barney Point and R G Tanner coal terminal were fully utilised.

PN3855

The ability for Gladstone Port Authority to meet its coal export commitments, being the third largest coal exporter in Australia, would only occur to enable it to use Barney Point for something other than coal when its planned Wiggins Island coal terminal is built and I note in respect to Wiggins Island coal terminal that it will be built by a consortium of 16 coal companies. They will develop and own the terminal but it will be operated by Gladstone Port Authority. I have an article from The Age to that effect which quotes the Premier of Queensland in respect to Wiggins Island and I'm happy to hand up a copy of that if the Full Bench requires it.

PN3856

The other area of differentiation between Gladstone Port Authority and coal export terminals does not follow through into the rest of Gladstone Port Authority's operations. In Gladstone Port Authority's submissions of 17 April it identifies in paragraph 31 who operates its other terminals and in that respect we note that Boyne Wharf, which is operated by Boyne Smelters Limited would fall under the Aluminium Industry Award. Rio Tinto Aluminium exports and imports from Fishermens Landing wharves. We say that it is likely that that operation would fall under the Aluminium Industry Award and Auckland Point Number 2, 3 and 4 wharves, which is addressed in paragraph 31(c) of Gladstone's submissions of 17 April, include the operators there being Caltex Australia Petroleum Pty Ltd, BP Australia Limited and Shell Australia.

PN3857

We submit on the scope of the Oil Refining and Manufacturing Award 2010 that those operations of oil and petroleum products would fall under the Oil Refining and Manufacturing Award so Gladstone has a number of terminals which are operated by employers in other industries so its argument that somehow separating out its coal terminals which is 70 per cent of its entire throughput, that's including the other operators - 70 per cent of it coal, separating it out it says will be untenable and impossible. It has done it for the other operators and we say that on the basis of all of our submissions that we've made both in the priority industry stage of award modernisation which is the submission I referred to, the undated one which is in the initial priority issues section of the drop-down menu on the Commission's website and our submissions in respect to Coal Terminals Award support the inclusion of Gladstone Port Authority's coal terminals.

PN3858

We suggest that the appropriate manner with respect to achieve that would be our draft scope, which is in paragraph 7, and explained in paragraph 8 of our submissions of 14 April and we commend that scope to the Commission. We also note that when Wiggins Island is complete and operating, it will double the capacity of Gladstone Port Authority for coal and only for coal and make it by far the largest coal export terminal in Australia. May it please.

PN3859

JUSTICE GIUDICE: Thank you, Ms Gray.

PN3860

MR HERBERT: Your Honour, might I say I understand why Ms Gray wanted me to go first. If I might be heard very briefly, a very large part of what was just said by way of the results of her personal tour guide of what she said she saw in Gladstone is contested. It is just quite wrong as a factual matter, but I understand these are consultations and the normal rules in relation to these matters don't apply, but really, given that she was referring to material that was put on three and four months ago by my clients in writing and available for anybody to challenge or test or to put on further material, to come into these proceedings and recite controversial and quite wrong material of that kind for the bar table in that way from a personal perspective, without - - -

PN3861

JUSTICE GIUDICE: You dispute that this is going to be the biggest coal terminal in Australia when the expansion is completed?

PN3862

MR HERBERT: It will be a very large one. I don't know that, quite frankly, whether it will or it won't.

PN3863

JUSTICE GIUDICE: If it was, do you think it would be rather peculiar to have the largest coal terminal in Australia outside the scope of an Export Coal Terminal Award?

PN3864

MR HERBERT: No, not at all, your Honour. For all the reasons that were mentioned in the Full Bench statement of 22 May as to why port authorities were to be separated out, if one goes to the material about what Gladstone Port

Corporation is, it is a massive operation, quite apart from the coal business. I have mentioned to the Full Bench but the government announced last week that the Bundaberg port is to be added to the Gladstone Port Corporation's responsibility so Gladstone Port Corporation will be responsible for the ports in Gladstone, it is presently responsible for Port Alma at Rockhampton, it will also be responsible for port of Bundaberg and that will cover many kilometres of the coastline, many hundreds of kilometres of the coastline and massive infrastructure, land and facilities that have nothing to do with coal or coal ports or coal terminals.

PN3865

It is the local authority, in effect, for all of those lands and areas and responsibilities. It has quarries. It operates quarries. It engages in land reclamation and the management of massive infrastructure which has nothing to do with coal as appears from the material that has already been put before the Commission in the earlier consultation processes and to that extent it remains what it is, a statutory authority quite separate and distinct from privately owned coal terminals.

PN3866

The question of the regulation of the employees' terms and conditions can be adequately dealt with within the award. It doesn't need to be covered by an award which relates to the specific functions of coal terminal operators, your Honour, privately owned and operated coal terminal operators when it is a statutory corporation with quite a different character so there is no conflict at all involved in that. As I submitted earlier, the appropriate course is for the Commission to characterise the port corporation for that it is, not for its individual functions and what it might do in particular instances. If that reasoning or character was the logical extent, then any port corporation which was involved in dredging activities would have to have the dredging activities carved off and put in the Dredging Award and if it was involved in various other activities which are covered by Port Services, Closed Waters and Maritime Services Awards, each one of them would have to be carved off and handed over to the individual constituent awards in which case there'd be a small rump of employees left in the middle who would be the only ones covered by the Port Authorities Award because they didn't fit comfortably within any of the other constituent activities and that would, with respect, be a very untoward way to deal with these matters.

PN3867

One appreciates lines have to be drawn somewhere and they ought to be drawn in the most logical and sensible and coherent place but the submission I put earlier is that in this particular instance, given the complex nature of what port corporations do and what Gladstone Port Corporation is called upon by statutory charter to do, the logical place to draw the line is at the boundaries of the corporation, not internally within its constituent individual activities.

PN3868

The reason I got to my feet is that much of what is said and much of what was said by Ms Gray is hotly contested in terms of its factual accuracy in relation to the comparisons between what Gladstone Port Corporation does and what some other coal loader in New South Wales might do but we're being, as it were, ambushed by that material here and now today without anybody bothering to put

it in writing so that we could see it coming and we could address it in an appropriate way. Having said that, I understand the limitations of the consultation process in relation to that matter but if the Commission is disposed to act on the truth of some of the matters that were put forward by Ms Gray, I'd seek an opportunity to put some further submissions to set the record straight in relation to those matters. If it please the Commission.

PN3869

MR WRIGHT: Excuse me, your Honour, I seek to make submissions in regard to the Coal Export Terminal Award. Wright, initial M, appearing on behalf of the CEPU. Given the calibre of Ms Gray's previous submissions, these submissions will be necessarily brief.

PN3870

The CEPU joins in the confusion regarding as to why it is that only the Mining Industry Modern Award is of any relevance. We say that it is of some relevance, indeed it forms part of the basis on which we see an electrical licensing allowance, but we would join with the CFMEU in noting the Stevedoring Industry Award and also the relevant enterprise awards

PN3871

In turning to specific issues within the award raised by Mr Morris, we note that the licensing allowance issue is obviously a topic near and dear to the heart of the Electrical Trades Union division of the CEPU. The licensing allowance is not simply covered by - it's to compensate for the additional responsibilities that are attached to holding an electrical allowance. Those are responsibilities that stem from relevant state legislation. The CEPU and its various state branches have made these submissions repeatedly over the years to the Commission and I don't intend to expand on them greatly here. I believe that they are contained in our submissions in regard to certificate other awards such as the Aluminium Industry Award, Gas Industry, et cetera.

PN3872

We wholeheartedly support indeed the whole of the submissions made by the CFMEU in regard to the coal export terminals. Particularly in relation to the classification structure, we appreciate the situation which the Commission was in publishing the exposure draft in that there was only one draft award proposed by the parties, being that from the employers with that heavily drawing from the Mining Industry Award. However, the classification as it's proposed would see a qualified tradesperson starting on a submission C 10 rate. That is quite a peculiar position, frankly, and not something that we would appreciate seeing rolled out in any award.

PN3873

The final two matters would just be the general - there are very few allowances contained within the exposure draft as referenced in the joint unions' submission. As foreshadowed, the licensing allowance is of particular importance. In response to Mr Morris's submissions regarding the leading hand allowance, notwithstanding what he says the effects of the classification structure proposed - it still does not appropriately countenance the work done by a leading hand. A leading hand could be working in a group where all people sit on the same classification level, but because of their role they have additional

responsibilities, that is what is compensated for in the leading hand. We're surprised that it is controversial and accordingly we would seek it and the other allowances referred to in the submissions of the CFMEU to be incorporated into the award. In terms of scope, we have nothing further to say than what Ms Gray has already put to the Commission. May it please the Commission.

PN3874

JUSTICE GIUDICE: Thank you, Mr Wright.

PN3875

MR HARVEY: Your Honours and Commissioner, I am not going to respond to Mr Herbert, but I did drift off when I went to address the other document which I handed up to the Full Bench being the classification structure. I would just like to draw the Full Bench's attention to the fact that this classification structure is in fact the same structure which is in terms of level and pay rates in the 2002 federal award for Port Waratah coal terminal and has been simplified.

PN3876

The process which the unions went through is not only to have all of the unions review it and be satisfied with the levels and percentages and rates, but in terms of the job descriptions column which is clearly only indicative job description, we also had the advantage of having our on site union representatives from Hay Point, Gladstone Port Authority coal loading, Port Waratah, MUAs Port Waratah union delegate and Port Kembla coal terminal representatives who actually perform this work day in, day out and they went through this and were comfortable that the existing roles are accurately reflected.

PN3877

Now, we don't resile from the fact that it could well be improved by having some position descriptors added, but we say that in terms of the number of levels and the internal relativities, the entry for the base trade and the fact that the operator rate and the trade rate do line up and progress at the same level and the salary rates or the wage rates which are 2002 rates in the federal enterprise award for Port Kembla coal terminal make it a far more appropriate classification structure than that prepared by or presented by the employers in the industry.

PN3878

I would only finish by saying that Gladstone Port Authority has not put in any written submissions in response to our written submissions at any stage in this industry development which has taken issue with any of the facts the CFMEU has outlined in its written submission. May it please.

PN3879

JUSTICE GIUDICE: Thank you, Ms Gray. Any other submissions? Yes, Mr Woods.

PN3880

MR WOODS: On behalf of Ports Australia, just to deal with this coverage question. When it arose in the initial consultations, we put forward a proposition that the port corporations or port authorities should be covered by one all encompassing award and that was the basis of a principal decision consistent with the overall principles of award modernisation. There has been obviously a lot of excitement today in respect of Gladstone. In terms of the approach on coal - - -

PN3881

JUSTICE GIUDICE: Do you call that excitement, Mr Woods?

PN3882

MR WOODS: Yes, perhaps I should get out more. There is, of course, another port authority that operates at another coal terminal on the other side of the coast in Fremantle at Kwinana and the principle that was put forward in the drafting of the Port Authorities Award and is then reflected in the exemption in the exposure draft is that the mixture of staff undertaking a variety of duties and therefore the common sense approach in terms of building an award structure that is sought to cover all of those employees and that's reflected also when we come to look at the Stevedoring Award in respect of the exemption that exists in that, so that was a principle in terms of approach that was undertaken and on our understanding the classifications, knowing that we've got coal loaders within the group of ports that are covered by Ports Australia and Gladstone is a member as is Fremantle and other activities, not only exporting coal, but exporting other material, that that is a structure which would provide appropriate conditions across all those employees, so on that principal basis, we support the maintenance of the existing exclusion in the exposure draft and to the extent that there is a tightening of the definition of a coal terminal for the purposes of that award, the further amendment put forward by the Coal Terminal Group.

PN3883

JUSTICE GIUDICE: Thank you.

PN3884

MR HERBERT: Your Honour, if I might with leave respond to something Vice President Lawler put to me, the instructions I have about the Wiggins Island situation is that it is by no means settled that Gladstone Port Corporation will be operating the Wiggins Island facility at all. The facility is being financed by coal companies, but there is still significant negotiations to be undertaken as to whether it will or it won't and I haven't seen any articles in any newspapers, but my instructions from the corporation are that it is not as yet settled in the least that it will operate the facility, but the recent economic downturn in relation to the coal industry in Queensland which is more significant than in other places in Australia because the coal is generally directed towards steel making has thrown whatever arrangements might have been thought of previously to be in frame are now far more doubtful and it may well be that Gladstone Port Corporation stays precisely where it is in terms of its current operations, despite the construction of Wiggins Island.

PN3885

VICE PRESIDENT LAWLER: Do you challenge the Port of Gladstone's website that identifies the Port of Gladstone's major cargo today as coal?

PN3886

MR HERBERT: No, no. We've asserted that in the submissions we've put forward. In volume terms that is certainly so, but there are 30 commodities that are exported through Gladstone. That is certainly the biggest, but as Ms Gray says, there are no employees whose sole occupation is devoted to coal. As she concedes, all employees - - -

PN3887

VICE PRESIDENT LAWLER: I think on the contrary, she said there was a significant group of workers who work exclusively on coal.

PN3888

MR HERBERT: She then qualified that by saying that every couple of months they go out and do something else and as her written submissions say with respect, your Honour, calcite she nominated as being the other commodity that that group is involved with, but that group comprises about a quarter of the workforce of Gladstone Port Corporation.

PN3889

VICE PRESIDENT LAWLER: But in any event, your arguments don't turn upon whether it is or isn't the major export group?

PN3890

MR HERBERT: No, no. That is beside the point on our submissions. One needs to characterise the corporation on an over-arching basis as to what it is and not go around counting the product or measuring the volume of the product. A downturn in the economic fortunes of coal, for example, could convert the Port Authority from one entity to another by that standard, whereas it would remain precisely what it is in respect of what commodities go through. A massive increase in another product, for example, that puts coal in the shade would change the equation yet again so that would be a very unruly horse as they say to hitch these matters to.

PN3891

JUSTICE GIUDICE: Yes, we will deal now with the Port Authorities Award so far as it hasn't already been dealt with. Yes, Ms Gray.

PN3892

MS GRAY: In respect to the amendment in the scope clause of the Coal Export Terminals Modern Award as adopted, then we see that there would be no necessity to make any change to the Port Authorities Award or scope because the remainder of the work other than the coal terminals work would continue to operate underneath it. May it please.

PN3893

JUSTICE GIUDICE: Yes, fine. Very well, Mr Harvey, are you about to do something?

PN3894

MR HARVEY: Yes. Can you hear us, your Honour?

PN3895

JUSTICE GIUDICE: Yes.

PN3896

MR HARVEY: Yes, your Honour, we did want to make a submission, well, the ASU did want to make a submission in regard to the Port Authorities Award, but also the Coal Export Terminals Award. You didn't appear to be able to hear us at the time.

PN3897

JUSTICE GIUDICE: There's a button in the middle of that device in front of you which has the effect of muting your microphone. I don't know whether you touched it or not.

PN3898

MR HARVEY: No, your Honour, I only touched it to take it off mute. Can your Honour hear me now?

PN3899

JUSTICE GIUDICE: Yes, I can hear you.

PN3900

MR HARVEY: Thank you, your Honour. Can I proceed?

PN3901

JUSTICE GIUDICE: By all means, yes, please proceed.

PN3902

MR HARVEY: Thank you, your Honour. Apologies for that and, your Honour, I can hear myself when I speak. Thank you, that's better, your Honour. Your Honour, with regard firstly to the Coal Exports Terminals, perhaps I can group this with the Port Authorities Award submissions. The ASU has filed written submissions with regard to both those matters and we thought the Full Bench had got it right with regard to the coverage as between the two awards. We noticed in the Commission's or the Full Bench's statement of 22 May when they decided to publish a Port Authorities Award, the Full Bench said:

PN3903

We have decided to publish a draft Port Authorities Award. Port authorities are usually government-owned bodies responsible for the overall administration of a port.

PN3904

That's how we see the characterisation of those activities, your Honour, and there are a number of underpinning Port Authorities Awards around the country and we thought that it was appropriate to have such a Port Authorities Award applying to those sorts of organisations. The ASU as I said has members employed by port authorities, including under the Queensland Port Authorities Award that Mr Herbert referred to earlier and that award as I am advised applies to our members who do work at the Gladstone Port Authority and our constant submission in these matters, including at the public consultations, is that our preference was for the modern Port Authorities Award to apply to the port of Gladstone, the Gladstone Port Authority, at least with regard to our membership and coverage areas.

PN3905

We are not concerned about the terms of the Coal Export Terminals Proposed Award because we have no employees who would be covered by that award because it doesn't cover white collar workers, so we haven't been involved in the combined unions' drafting process or negotiating process, because we simply have no membership or coverage areas involved in that, but that does raise the question, that's one of the reasons why we preferred the situation to have the Port Authorities Award apply to all port authorities of the type that I've described,

including, your Honours and Commissioner, the Gladstone Port Authority where our members work under the terms of a port authority now and if the Coal Export Terminals Award was to apply to the Port of Gladstone, one of the presumably unintended consequences of that as applies to us may be that the white collar professional employees would cease to have award coverage as a result which is certainly not a situation that we would prefer so we thought, your Honours and Commissioner, that the Full Bench had got the balance right between the coverage of the Port Authorities Award and the Coal Export Terminals Award in the coverage clauses they propose in both awards.

PN3906

The only other submission to make, your Honour, was we're talking about port authorities at the moment, we made some written submissions about the content of the proposed Port Authorities Award based on the provisions of the Queensland Port Authorities Award that Mr Herbert referred to, including pointing out that it had a substantially shorter ordinary hours of work of 36.35 I think it is as opposed to 38 in the modern award but nobody has dealt with those written submissions by way of any other written submissions or verbal submissions today so I won't repeat any of that, your Honour, but I draw the Bench's attention to it.

PN3907

Just finally, your Honours and Commissioner, at the every end of our submissions we filed with regard to these matters on 12 June at pages 9 to 11 we did refer there to the position of the shipping officers that I referred to this morning with regard to the Clerical Industry Shipping Officers Award. We referred to the situation that was likely to arise as a result of what had come out of the consultations and the exposure draft awards that had been published by the Full Bench and flagged particularly at paragraphs 36 to 40, flagged that issue clearly and what we thought ought to be done about that and that's what we've done yesterday and referred to this morning under the heading of Maritime Officers with regard to that.

PN3908

So at least, your Honour, I feel content that at least we flagged that to the Bench and also to other parties to these proceedings at the earliest possible opportunity with regard to that particular award, obviously not with regard to the specifics of what we proposed, but we did address that issue at the earliest possible opportunity. They're the submissions of the ASU this afternoon in this matter, your Honour.

PN3909

JUSTICE GIUDICE: Mr Harvey, as I understand what you've just said is simply repeated what's in your written submission.

PN3910

MR HARVEY: Only on the last point, your Honour, that is true, but your Honour questioned me about that this morning.

PN3911

JUSTICE GIUDICE: I mean generally.

PN3912

MR HARVEY: No, your Honour. I only wanted to comment in response to the debate that we've just had about whether Gladstone in particular should be in the

Port Authorities Award or effectively covered by the Coal Export Terminals Award and some of the material that I mentioned to that was material that I felt I needed to include only in response to comments that have been made in verbal submissions this afternoon. If the Commission pleases.

PN3913

JUSTICE GIUDICE: Yes. Any other submissions in relation to the Port Authorities Award? Mr McNally?

PN3914

MR MCNALLY: The Maritime Union and the institute have filed written submissions. We rely upon those. I was asked by Ms Angus on behalf of the AWU to indicate to the Commission that they support MUA AIMPE position in that dredgers should be excluded from the Port Authority Award and assigned to the Dredgers Award which is in stage 4.

PN3915

JUSTICE GIUDICE: Thank you, Mr McNally. No other submissions?

PN3916

MR WOODS: Your Honour, if I could respond to the Ports Award?

PN3917

JUSTICE GIUDICE: Yes, Mr Woods.

PN3918

MR WOODS: I just have a couple of submissions. Mr McNally had made a submission as in their reply in respect of some allowance questions to submissions that we had put in writing and the point was that if there was one port that had one of the allowances they should all appear. We have addressed why we have sought to have 14.2(c) and 14.3 excluded in our submissions. If there is a matter where there is a port that needs to have that continued then that can be addressed either through a transitional matter or through a take home pay order as anticipated if needed.

PN3919

In the APESMA's submissions there was a reference back to the Ports of Victoria Consolidated Award in respect of engineers. When you turn to the classification structure that we have put into the draft award and been delivered as part of the exposure draft by the Commission we see that there is a descriptor of types of duties and responsibilities and qualifications at the upper ranges of those classifications which actually satisfactorily addresses the points raised by APESMA in respect of engineers so that there's no need to otherwise vary that classification structure.

PN3920

In respect of the ASU's submission in respect of the Queensland Port Authority provisions, what we say in respect of the operation of that is that again if it's a matter that is peculiar to these relevant ports then it's a matter that could be addressed either through a transitional provision or through a take home pay order as the appropriate way of dealing with a particular state based provision. There is in respect of the Towing Awards we have identified in our submissions that having looked at that and for the two ports that operate towage operations, rather than incorporate all of the effective provisions into a class of employee because

they are unusual we sought to depart from that principle that we had identified in respect of the Ports Authorities Award having total coverage and I understand Mr McNally's clients support that proposition.

PN3921

That would probably require a minor change to clause 4.1 in the Port Authorities Award that has a total exclusion in respect of other modern awards to incorporate that and I make the point that the reason that we see the towage applying is simply rather than to replicate those very seagoing particular clauses that operate to those employees into the Port Authorities Award.

PN3922

The only other point was there are submissions at 2.1(b) of our written submissions that are about marine pilots and to the extent that there's a heading above that referring to superannuation that was incorrect. There should have been a heading in respect of the marine pilots' submissions we make in respect of their non inclusion in the award.

PN3923

JUSTICE GIUDICE: I don't quite follow that, Mr Woods.

PN3924

MR WOODS: Sorry?

PN3925

JUSTICE GIUDICE: I don't follow what you just said.

PN3926

MR WOODS: Right.

PN3927

JUSTICE GIUDICE: I'm looking at 2.1, superannuation, clause 18.5.

PN3928

MR WOODS: Yes, and 2.1(b) relates to marine pilots and there should have been a heading. It should have been numbered differently.

PN3929

JUSTICE GIUDICE: I follow, yes. Yes, thank you. All right. If there's nothing else on the Port Authorities Award we'll turn to the Stevedoring Industry Award.

PN3930

MS GRAY: Your Honour, I wonder if I might go first and then be excused because I have a very, very quick submission and that is - - -

PN3931

JUSTICE GIUDICE: You're confident that Mr Herbert isn't involved in this matter?

PN3932

MS GRAY: I don't care. We support the MUA's submissions in this respect and I appreciate the exclusion in respect to the Coal Export Terminals Award being proposed. But we do note that the reference to fuel oil in cargo may lead to some overlap between the Oil Refinery and Manufacturing Award which initially on its draft is only seeking to cover those terminal operations conducted by oil companies then Terminals Pty Ltd came along and sought an inclusion which was

agreed to by all parties subject to the Full Bench finding that acceptable. So we just say that it may be the cautious approach to also have an exclusion to the Oil Refining and Manufacturing Award 2010 and we note that if an oil terminal is not being operated by an oil producer or Terminals Pty Ltd then it may well be done by stevedoring employees, an employer would be covered appropriately by the Stevedoring Industry Award. May it please. If the Full Bench would - - -

PN3933

JUSTICE GIUDICE: Yes, certainly, Ms Gray. Mr McNally.

PN3934

MR MCNALLY: The MUA and the AIMPE have no difficulty with the exclusion of the awards referred to on behalf of the CFMEU. We have filed a written submission here in this matter dated 12 June and we rely on those written submissions. Mr Morris's client raises a difficulty in relation to expression of allowances in their written submissions - sorry, that's another matter. Thank you, your Honour.

PN3935

JUSTICE GIUDICE: Very well. Yes, other submissions in relation to the Stevedoring Industry Award, draft award? Very well, I think that leaves us with marine towage.

PN3936

MS C OPPY: Your Honour, I just had a very brief submission in relation to the Port Authorities Award but I don't think at the time you could hear me. Would it be appropriate for me to make that submission now?

PN3937

JUSTICE GIUDICE: Why don't you make whatever submission you wish to make in relation to any of these matters, Ms Oppy, and then provided it's not controversial you will be free to do something else.

PN3938

MS OPPY: Thank you, your Honour. Westscheme is seeking the inclusion of the named default superannuation fund in the Port Authorities Award. It was previously included as a default superannuation fund in the Marine Stores Award and on this basis it is submitted that it should be included as a default fund in the Port Authorities Award. Your Honour, that concludes my submissions and with your permission I will be departing the proceedings. Thank you very much.

PN3939

JUSTICE GIUDICE: Thank you, Ms Oppy. Yes, Mr McNally, you were saying?

PN3940

MR MCNALLY: We rely upon our written submissions. There were allowances in respect to multiple towing allowance, cooking allowance and added skill allowance expressed in the exposure draft on a per hour basis. We agree with Mr Morris's submissions that the multiple towage allowance should be expressed per day and the other two allowances expressed per week. If the Commission please.

PN3941

JUSTICE GIUDICE: Thank you, Mr McNally. Mr Morris.

PN3942

MR MORRIS: If the Commission pleases. We likewise rely on our 12 June submission in relation to this award and as Mr McNally says, we've drawn attention to an issue in respect of those tug and barge allowances in clause 16 which Mr McNally indicates is acceptable so that seems to be a matter on which we're totally agreed. We also accept the union's proposal in its submission to delete schedule A which lists classifications and the relevant clause, clause 13.1(b) that refers to schedule A. Mr McNally made submissions this morning in relation to Maritime Awards about this classification issue.

PN3943

We don't see a need to include classifications or definitions of classifications in this award. There's a master, an engineer and a rating. They're the classifications. Everyone knows what they are. They're not really capable of confusion and we have no further submissions to make. If the Commission pleases.

PN3944

JUSTICE GIUDICE: Thank you, Mr Morris. Any other submissions?

PN3945

MR MCNALLY: Can I draw the attention of the Full Bench to the fact that while we were here this morning there was promulgated regulations relevant to chapter 1, division 3, geographical application of the Act which regulations deals with the coverage of the Act in certain areas beyond the territorial sea and deals with the permit and licence situation.

PN3946

JUSTICE GIUDICE: I see. I think I gathered from this morning's exchanges, Mr McNally, that there are two potentially relevant developments, one being the regulations and the other being the foreshadowed amendment to the Request.

PN3947

MR MCNALLY: Ministerial direction, yes.

PN3948

JUSTICE GIUDICE: Thank you for bringing that to our attention. If there are no other submissions, Mr Harvey, you have been very quiet.

PN3949

MR HARVEY: No, we have no submissions with regard to this particular award, your Honour. Thank you.

PN3950

JUSTICE GIUDICE: Thank you. This court room is going to be used for a largely ceremonial purpose in the morning. If there is anybody here who was contemplating leaving anything in the court room to use tomorrow I would urge you not to and we will adjourn now until 11 o'clock tomorrow morning.

<ADJOURNED UNTIL WEDNESDAY, 1 JULY 2009

[3.50PM]