

2 August 2018

Award Modernisation Team  
Fair Work Commission  
80 William Street  
East Sydney NSW 2011

Dear AMOD,

**AM2014/241 – 4 yearly review of modern awards – Ports, Harbours and Enclosed Water Vessels Award 2010**

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We refer to outstanding items 9 and 23 in the most recent Summary of Submissions dated 7 November 2016 for the *Ports, Harbours and Enclosed Water Vessels Award 2010* ('the Award'), the most recent exposure draft for the Award (also dated 7 November 2016), the 6 June 2018 'Background Paper' prepared by the Commission research area concerning these items, and the 21 June 2018 conference convened by President Ross in relation to the Award.

The Background Paper states, incorrectly in our view, that '*any work between midnight on Friday and midnight on Sunday is overtime*.'<sup>1</sup> The Background Paper's statement indicates its conclusion is based on Clause 18.2 of the Award which states '*[o]rdinary hours may be worked between 6am and 6pm for up to eight hours per day, Monday to Friday inclusive*.' This statement in the Background Paper also appears to reflect the position of the Maritime Union of Australia.<sup>2</sup>

During the 21 June 2018 conference, the Australian Federation of Employers and Industries (AFEI) were requested to convene a conference of interested parties to address AFEI's position concerning ordinary hours and weekend rates under the Award.

As requested, AFEI held a teleconference of interested parties on 4 July 2018. From the teleconference, AFEI can report that the union parties and MIAL would require us to file written details explaining our position, and any proposed wording for the exposure draft, in order for them to be able to provide comment.

AFEI therefore advises its position, and the position of the employer parties listed in the Schedule below, that:

1. Clause 18.2 of the Award is not an exhaustive statement of when ordinary hours can be worked;
2. Clause 20.1(b) of the Award is clear that it permits ordinary hours to be worked on Saturdays, irrespective of whether it is day work or shift work;

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<sup>1</sup> At [10]

<sup>2</sup> At [19] of the MUA's submissions dated 5 December 2016, and at [10] of the MUA's submission dated 14 April 2016, also cited in the Background Paper at [20].

3. Clause 20.3 of the Award is clear that it permits ordinary hours to be worked on Sundays, irrespective of whether it is day work or shift work;
4. The Award prescribes a loading of 50% and 100% respectively for ordinary hours and overtime worked on Saturdays and Sundays;<sup>3</sup>
5. Clause 18.2 of the Award is not an impediment to working ordinary hours on a weekend, or on shift work;
6. There is no justification for removing the wording currently in Clause 20.1(b) and 20.3 of the Award from the substantive text of the section, which permits ordinary hours to be worked on weekends.
7. The Exposure Draft should be revised to ensure it is clear that it continues to permit an employee to work ordinary hours on a Saturday and Sunday, as is currently permitted by Clause 20.1 of the Award.

AFEI proposes Clause 12.2 of the Exposure Draft is revised as follows to retain appropriate wording from the current Award:

- 12.2 Employees will be paid the following rates for overtime worked Monday to Friday, ordinary hours and overtime worked on a Saturday or on a Sunday, or work on a public holiday:

		% of ordinary hourly rate
<b>Overtime</b>		
Monday to Friday	First three hours	150
	After three hours	200
<b>Ordinary hours and overtime</b>		
Saturday		150
Sunday		200
Public Holiday		250

If it is the Commission's intention to proceed with the current wording in Clause 12.2 of the Exposure Draft, AFEI requests, also on behalf of the parties listed in the Schedule below, that directions are issued for interested parties to file written submissions on this matter.

Yours faithfully,



Tony Doyle  
Director, Workplace Relations

**Schedule**

These submissions are also on behalf of:

Boating Industry Association – Commercial Vessels Division; and  
Association of Marine Park Tourism Operators

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<sup>3</sup> Clause 20.1(b) and 20.3