



ABN: 32 004 078 237
ACN: 004 078 237

South Australia
Level 6, 41 Currie Street
Adelaide SA 5000
(GPO Box 2883, Adelaide SA 5001)
P (08) 8212 0585
F (03) 8212 0311
E saamma@amma.org.au
W www.amma.org.au

Justice G M Giudice
President
Australian Industrial Relations Commission
GPO Box 1994
Melbourne VIC 3000

6 March 2009

Dear President

**HYDROCARBONS INDUSTRY (AM/2008/44): AWARD MODERNISATION
SUBMISSION**

Please find attached, for filing, AMMA's submission and draft Hydrocarbons Industry (Upstream) Award 2010.

Please feel free to contact me if you have any questions about the submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'C Platt', with a long horizontal flourish extending to the left.

Christopher Platt
Director Workplace Policy

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
Workplace Relations Act 1996
s.576E - Procedure for carrying out award modernisation process

Request from the Minister for Employment and Workplace Relations
(as revised 18 December 2008)
Award modernisation
(AM/2008/44)

Submission of the Australian Mines and Metals Association
regarding award modernisation for the oil & gas industry
6 March 2009

INTRODUCTION

- 1 This submission concerns the award modernisation of the hydrocarbons industry. In general terms, the hydrocarbons industry is made up of two parts: “upstream” activities related to the extraction of hydrocarbons from oil and gas fields; and “downstream” related to refining of crude oil and manufacture of petroleum products. The two parts of the industry have very different industrial arrangements and have historically been regulated separately.
- 2 For the reasons described below, the Australian Mines and Metals Association (**AMMA**) seeks to preserve this distinction. Accordingly, this submission is concerned with the “upstream” part of the hydrocarbons industry only. It seeks to ensure that the terms and conditions of the modern award(s) accommodate the needs of the modern upstream hydrocarbons industry.

- 3 AMMA has prepared a draft modern award for the upstream hydrocarbons industry for consideration by the Commission. The draft award is referred to in this submission as the Hydrocarbons Industry (Upstream) Award 2010 (**HIUA**). It is attached as Appendix 1.
- 4 This submission deals with the following matters:
- (a) the principles relevant to the award modernisation process;
 - (b) the appropriate scope of a modern award for the upstream hydrocarbons industry;
 - (c) the approach taken by AMMA to develop safety net content for the HIUA, having regard to the requirements of the modern industry and existing award content; and
 - (d) the content of particular clauses in the HIUA.

Relevant principles

- 5 In performing its award modernisation functions, the Commission must have regard to the requirements of:
- (a) Part 10A of the Workplace Relations Act 1996 (Cth) (**Act**);
 - (b) the Request from the Minister for Employment and Workplace Relations, (including the amendments as at 18 December 2008) (**Request**); and
 - (c) the National Employment Standards (**NES**) as contained in the Fair Work Bill.

6 In addition, the various Statements and Decisions of the Full Bench provides guidance in relation to how these requirements should be met in developing modern award(s) for the hydrocarbons industry.¹

7 AMMA has had regard to this material in developing the HIUA. AMMA contends that the draft HIUA attached at Appendix 1 is consistent with these requirements.

COVERAGE OF THE MODERN AWARD

Coverage principles

8 Based on the requirements of the Act and the Request, AMMA submits that the scope of modern awards should be established having regard to the following principles:

Legislative objectives

(a) The Commission is obliged to have regard to the following legislative objectives:

(i) the relevant objects of Part 10A of the Act (including simplicity, reducing the regulatory burden and promoting flexible modern work practices and the efficient, productive performance of work and certainty);

¹ Specifically, the following materials provide guidance: the Statement dated 30 January 2009 (**30 January Statement**); the Statement dated 23 January 2009 (**23 January Statement**); the Decision dated 19 December 2008 (**19 December Decision**); the Statement dated 12 September 2008 (**12 September Statement**); the Statement dated 3 September 2008 (**3 September Statement**); the Decision dated 20 June 2008 (**20 June Decision**); and the Statement dated 29 April 2008 (**29 April Statement**).

- (ii) the matters the Commission must have regard to in s.576B of the Act;
- (iii) the objects of the Request (including avoiding extending coverage to employees who perform work that has historically not been regulated by awards and high income earners, not disadvantaging employees or increasing costs for employers, or altering enterprise awards);
- (iv) the desirability of reducing the number of awards (see clause 4B of the Request and s.576B(2)(d)); and
- (v) the above objectives are equally important and must be balanced having regard to the circumstances of the industry under consideration and its historical award regulation. The key focus of this process is to establish a comprehensive set of awards that provide an appropriate safety net of minimum terms and conditions for the circumstances of each industry or where relevant part thereof.

Regulation of similar systems of work

- (b) Award modernisation will be effective and sustainable where the industries in question are similar in content and operation:
 - (i) The determination of the boundaries of award regulation in the hydrocarbons industry should not run the risk of introducing across the upstream hydrocarbons industry particular terms and

conditions which have a different background, form, content or structure or regulate different systems or methods of work.

- (ii) This could adversely effect, for example, the flexibility and adaptability and competitive advantage enjoyed by the industry and arrangements that have been tailored for the industry. This would be contrary to the requirements of the Act for award modernisation to be simple and to promote flexibility.
- (iii) In particular it should be noted that the working arrangements, remuneration and hours of work provisions in the downstream industry are markedly different from the upstream industry. In addition, the upstream industry is characterised, in large part but not exclusively, by work being performed in remote locations under extended work cycle rosters, where the working of 12 hour ordinary hours per day is the norm for both shift workers and day workers.

Historical award regulation

- (c) It is consistent with the objectives of the Request to create a comprehensive set of modern awards and to reduce the number of awards to recognise the historical boundaries of this industry and the peculiar circumstances of the enterprises in specific industries. If an industry has been regulated by awards that have their genesis in a separate industry award, which has regard to the specific needs of the enterprises operating in the industry, it should remain so. This is consistent with s.576A(2)(c) of the Act.

- (d) Where an industry constitutes a distinct and separate industry within the Commission's panel structure and the industry has a distinct, clear and concise meaning/identity to the Commission, the unions, employers and those operating in the industry, it should remain separate. The Full Bench adopted this submission of the union and employer parties in accepting separation of the coal mining industry from the mining industry (see paragraphs 15 – 18 of the 20 June Decision).

Views of the parties

- (e) The views of industry participants on whether particular industries should be or not be part of the upstream hydrocarbons industry should be given weight and where industry participants generally agree this should not be disturbed, unless exceptional circumstances exist. The Full Bench found it appropriate to give weight to the views of the parties (see paragraphs 10, 13 and 95 of the 20 June Decision).

- 9 The coverage provision of the HIUA has been developed consistent with these principles.

HIUA coverage

- 10 As indicated above, the hydrocarbons industry is made up of two discrete parts with different industrial arrangements which have historically been regulated separately. The "upstream" activities:

- (a) traditionally relate to the extraction of hydrocarbons from oil and gas fields as opposed to the "downstream" activities, which relate to refining of crude oil and manufacture of petrochemical products;

- (b) are operationally distinct from the downstream activities and involve different processes and production environments;
- (c) are undertaken largely by different operators;
- (d) have different and distinct working conditions, regulated by separate existing federal awards and NAPSAs.

11 For these reasons, it is appropriate for separate modern awards to regulate “upstream” and “downstream” activities. This arrangement has the general support of other industry participants, including the downstream employers, and AMMA understands it is also supported by the Australian Workers’ Union (**AWU**), which is the principal union in the upstream hydrocarbons industry.

Operation of the proposed clause

12 A key objective for the coverage clause is to ensure that work performed by employers and employees engaged in the upstream hydrocarbons industry falls within the scope of the HIUA and that other awards do not regulate this work. This is to ensure that employers engaged in the upstream hydrocarbons industry are not subject to regulation by multiple modern awards and that the particular requirements of the industry are met.

13 Under the proposed coverage clause, the HIUA will apply to employers that meet three requirements:

- (a) the employer must be engaged in the upstream hydrocarbon industry (as defined), according to established principles for determining the industry

of the employer and recognising that an employer can be engaged in more than one industry;

- (b) the employer has employees engaged in the upstream hydrocarbons industry as defined; and
- (c) the employees are engaged in a classification in the award.

14 The HIUA will cover employees of such employers provided that they are engaged in the hydrocarbon industry and in a classification in the award.

Definition of the Upstream Hydrocarbon industry

15 AMMA proposes a definition of the hydrocarbon industry that encapsulates the historically recognised 'upstream' hydrocarbons industry.

16 The term hydrocarbon has been defined to include hydrocarbon products extracted from oil and gas fields or the earth (excluding coal). As a result it includes coal-seam methane operations. This definition reflects the range of activities presently undertaken by the upstream operators as part of the upstream industry.

17 The various upstream activities performed by participants in the industry are specifically listed as being included in the definition. The activities covered are:

- (a) the exploration and/or drilling for hydrocarbons by use of on and off shore drilling rigs or platform drilling rigs or any other means;
- (b) the preparatory work and development of an oil or gas field, including well servicing, and decommissioning of hydrocarbon facilities;

- (c) the extraction, separation, production and processing, piping, storage, distribution and transport (including handling or loading facilities) of hydrocarbons;

18 In keeping with existing award coverage and practice, AMMA also includes various support functions that are necessary to carry on the activities set out above, including:

- (a) provision of services incidental to the activities set out in paragraph 17, including:

- (i) provision of clerical and administrative, warehousing, stores and materials, medical, laboratory, utility or general services and or platform services; where such services are provided at a location where the principal hydrocarbons activities described in paragraph 17 are performed;

- (ii) provision of catering, cleaning and accommodation services where owned or operated by an employer engaged in the the principal hydrocarbons activities described in paragraph 17, where such services are provided at a location where these activities are performed;

- (iii) provision of supply base services owned or operated by an employer engaged in the activities described in paragraph 17.

- (b) the commissioning, servicing, maintaining (including mechanical, electrical, fabricating or engineering and preparatory work) modification, upgrading, or repairing of facilities, plant and equipment used in the

activities set out in paragraph 17 by employees principally employed to perform work at a location where the principal hydrocarbons activities are being performed;

- (c) the provision of temporary labour services used in the activities described in paragraph 17, by temporary labour personnel principally engaged to perform work at a location where the principal hydrocarbons activities described in paragraph 17 are being performed.

19 Accordingly, consistent with the objective of a single award for the upstream industry, the definition starts with exploration and drilling, includes the various offshore and onshore operations activities and support functions involved in the upstream extraction and processing activities and ends at the point at which the hydrocarbon material leaves the plant, either by pipeline, ship or other means of transport.

20 The upstream industry includes processing by way of physical separation of component gasses and removal of unwanted gasses or hydrocarbon components (eg water) but does not include chemical alteration of the products. Chemical processing by refining, or the storage and distribution of hydrocarbon end-products, has been historically regarded to be part of the “downstream”, oil refining, manufacturing and blending industry (or other industries covering manufacturing of petro-chemical or hydrocarbon-based products). Clauses 4.1 and 4.2(ii)-(iii) seek to codify the traditional upstream/downstream industries.

21 Further, it recognises the modern reality that work in the industry is performed not only by employees of the hydrocarbons operators but also by employees of contractors who are principally engaged to work in the industry. This is an

- inevitable result of the location and nature of hydrocarbons operations. Contractors operate specialist businesses or parts of their businesses that are dedicated to the upstream hydrocarbons industry and use employees who are principally employed in the upstream hydrocarbons industry.
- 22 It is appropriate that employees of such contractors be regulated by the HIUA to the extent that they operate in the upstream hydrocarbons industry in this way. This is also consistent with current award regulation under existing federal awards. Clause 4.1(e) includes in the definition of the industry various commissioning, maintenance and servicing and modification functions performed on plant and equipment used in the hydrocarbons industry. The inclusion of such maintenance and modification functions reflects existing award coverage. For example, the Hydrocarbons Award contains general coverage of maintenance and servicing functions and Part 2 of the award contains provisions for modification work for employees within its scope.
- 23 It is important that these existing arrangements are maintained for the industry. Maintenance, servicing and modification performed by the maintenance trades people at such locations has traditionally formed part of the hydrocarbons industry, including maintenance services, upgrades or modifications to existing facilities and shut down and refurbishment activity. This is the case throughout the industry in both offshore and onshore operations, but particularly where work is performed in remote locations, using the limited existing workforce that is available.
- 24 In circumstances where this work is performed at hydrocarbons operations by employees who are principally engaged to work there, it is appropriate that

uniform award regulation should apply to the work. The flexibilities and particular requirements for the hydrocarbons industry in relation to such work are the same as for the rest of the activities covered by the award. It is not appropriate that other modern awards should have to include these flexibilities to enable such work to occur. Accordingly, it is not appropriate that other awards, including maintenance awards, should cover this work. The unique requirements of the hydrocarbons industry are such that existing industry boundaries should be retained.

25 However, the HIUA would not cover employees of contractors who are not principally employed to perform work at a location where upstream hydrocarbons activities are taking place. Contractors/employees who only provide work in the upstream hydrocarbons industry periodically would not be covered (say, employees of an electrical contractor who on any given day might do electrical repairs or maintenance at an onshore hydrocarbon facility, at the school hall, at the shopping centre, etc). Further, major project construction by metals, building or civil construction personnel that is not categorised as repairing, modifying or upgrading of an existing installation would not be covered by the HIUA, as the employers of such personnel would not be engaged in the hydrocarbons industry.

26 As is the case now, ad hoc or periodic contractors will be appropriately regulated by other arrangements in the metals industry, electrical contracting industries or construction industries. This reflects work that has been traditionally regulated by awards applicable to these industries where they interact with the upstream hydrocarbons industry. It also reflects the position that employees of temporary labour providers should take on the award regulation applicable to the industry in which they are working.

Specific exclusions of industries and occupations

- 27 Where there is the capacity for overlap between the upstream hydrocarbons industry and other industries, AMMA submits that it is appropriate to set out a default priority rule by a specific exclusion. This is consistent with the objective that a single modern award should apply to the work covered by the HIUA.
- 28 Based on the coverage principles set out above, there are various industries and occupations that AMMA considers should be expressly excluded from the upstream hydrocarbons industry.
- 29 The industries that should be excluded are:
- (a) Deck officers, maritime engineer officers, ratings and catering crew engaged on a vessel;
 - (b) “downstream hydrocarbons” activities, including oil refining and manufacturing or blending of petroleum products (or any other manufacturing of petro-chemical or hydrocarbon-based products);
 - (c) “downstream” support activities, such as transportation, storage, distribution, marketing and sale of finished hydrocarbons products, including operations at bulk liquid terminals, refineries, airports and depots; and
 - (d) the aviation industry.
- 30 Overlap between these separate industries and the HIUA would otherwise arise and to include the distinct industry needs of those industries would require unnecessary modification of the HIUA.

- 31 The occupations that AMMA contends should be expressly excluded are:
- (a) information technology professionals, professional engineers, geologists and scientists (unless employed at the location where the activities described in paragraph 17 are being performed);
 - (b) security, catering, cleaning and accommodation services (unless employed by an employer engaged in the upstream hydrocarbon industry or related company);
- 32 AMMA considers it is not appropriate for these occupations to be regulated by the HIUA. The security catering, cleaning and accommodation services will be covered by the modern Hospitality Industry (General) Award 2010. AMMA anticipates that a modern award will also be made for professional scientists and engineers.

Other specific exclusions

- 33 Section 576V(3) states that a modern award must be expressed not to bind employers bound by enterprise awards in respect of employees to whom the award applies. Paragraph 2 of the Request makes it clear that high-income employees will be excluded from the scope of modern awards. In addition, paragraph 4A of the Request makes it clear that not all employees will be covered by awards.
- 34 Clauses 4.2(a) and (b) reflect the Commission's approach to these exclusions in the Priority Awards.

APPROACH TO DEVELOPING SAFETY NET CONTENT

- 35 The development of safety net content for modern awards involves two phases:
- (a) the establishment of a new safety net of minimum terms and conditions of employment appropriate for the upstream hydrocarbons industry; and
 - (b) transitional arrangements where the new safety net established by modern awards is different from the terms and conditions in existing awards and NAPSAs.
- 36 Both these tasks must be undertaken having regard to the requirements of the Act and the Request.

Principles to develop modern award content

- 37 AMMA acknowledges that the existing federal award content is a starting point for developing the content of the HIUA. However, the existing content needs to be measured against the principles and guidelines for award modernisation to assess whether it is an appropriate modern safety net for a modern flexible industry.
- 38 Accordingly, the following principles should guide the development of award content for the HIUA:
- (a) Current work arrangements and practices must not be adversely affected or altered as a result of the making of the new award. The new safety net should reflect and accommodate the current flexible work practices operating in the industry and its needs for the future. The safety net of minimum terms and conditions that prevail under existing awards should

not be assumed to constitute an appropriate safety net for a modern award moving forward.

- (b) The list of relevant awards published by the Commission is a starting point only. The awards should be analysed to identify those relevant to the scope of the HIUA. Awards relevant to the downstream industry or other work outside of scope (eg those relating to the maritime industry etc based on the exclusions above) should not be considered.
- (c) AMMA submits that there is not a single principal federal award for the upstream hydrocarbons industry. It considers that the following awards are the key federal hydrocarbons awards (**Key Hydrocarbons Awards**):
 - (i) Hydrocarbons and Gas (Production and Processing Employees) Award 2002 (AP820493) - (**Hydrocarbons Award**);
 - (ii) Bass Strait Platform Drilling Maintenance Award 1999 (AP769637) - (**Bass Strait Drilling Award**);
 - (iii) AWU Oil Drilling Rig Workers (Offshore Platform Drilling Rigs) Award 2001 (AP812665) - (**Offshore Platform Drilling Award**);
 - (iv) Oil Drilling Rig Workers (Offshore Mobile Drilling Rigs) Award 2001 (AP812663) - (**Offshore Mobile Drilling Award**); and
 - (v) Oil Drilling Rig Workers AWU (Onshore) Award 1999 (AP791878) - (**Onshore Drilling Award**).
- (d) The Key Hydrocarbons Awards (as they applied at the time of the making of the HIUA and to the extent that they deal with allowable award matters)

provide an initial guide only for developing award content for the new safety net. This content must be reviewed having regard to existing flexibilities and work practices in the industry (including practises in those parts of the industry which have not been regulated by awards but as a result of the award modernisation process will now be covered by the HIUA). It should reflect the current and future needs of the industry.

- (e) Where existing awards contain content that is specific to a particular enterprise, such content should be approached with caution. Enterprise award content may be relevant to this review process, to the extent that it provides for particular working arrangements or flexibilities (eg provisions that may be necessary to continue post 1 January 2010 at current operations). However, the content of the HIUA should reflect a true award safety net of general application to the industry and levels of benefit should not necessarily be determined by arrangements at a particular enterprise.
- (f) Minimum terms and conditions must be identified to establish a true safety net for matters to be included in the modern award. Differences between the minimum standard and existing arrangements should be dealt with through transitional arrangements. AMMA submissions on the subject of transitioning from the existing transitional awards and NAPSAs are dealt with in paragraphs 138 to 160 below.
- (g) The Commission's approach to 'standard modern award' clauses (e.g Access to Award and NES, NES and this Award, Award Flexibility, Consultation and Dispute Resolution) should be observed unless there

are particular sectoral needs or practices that cannot be met by using the standard modern award clause.

39 The requirements of the modern industry are considered in paragraphs 40 to 60 below. The award content for each clause of the HIUA based on these principles is explained in paragraphs 61 to 160 below.

REQUIREMENTS OF THE MODERN UPSTREAM HYDROCARBONS INDUSTRY

40 Prior to considering the proposed provisions of the HIUA in detail, it is first appropriate to consider the current arrangements and future needs of the modern upstream hydrocarbons industry.

41 The objects of Part 10A of the Act provides that, among other things, modern awards must:

“promote flexible modern work practices and the efficient and productive performance of work”.

42 In performing its functions under the award modernisation process, the Commission must have regard to various factors including

*“promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market”.*²

² Section 576A to C and Section 576B to A.

- 43 In assessing how modern awards should promote flexible modern work practices, it is appropriate for the Commission to have regard to the needs of the modern industry in practice. This objective will not necessarily be met by merely replicating existing award content.
- 44 In particular, it is appropriate that employers should be able to continue their existing practices and work arrangements, without significant change to current terms and conditions. The Government's intention for the award modernisation process not to impede the continuation of existing rostering and hours of work arrangements was confirmed in a public statement made on 1 April 2008, where Deputy Prime Minister Gillard stated;

*'Fly-in-fly-out is vital for the mining industry. People work on historically accepted roster patterns; that's part of the mining industry. Workers work those patterns, they are used to working those patterns; many of them enjoy working those patterns and those patterns of work will be available to the mining industry under our workplace relations reforms.'*³

- 45 AMMA contends that it must be recognised that the modern award will operate on a common rule basis with broader application than the existing award regulation of the hydrocarbons industry and accordingly hours of work flexibility ought to recognise existing arrangements which have not previously been award covered.

³ Joint Press Conference with the Hon. Julia Gillard MP, Acting Prime Minister; Minister for Education; Minister for Employment and Workplace Relations; Minister for Social Inclusion, Transcript, 1 April 2008, Canberra, viewed 22 December 2008, <http://mediacentre.dewr.gov.au/mediacentre/Gillard/Releases/20000trainingplacesonlinediscussionpaperNationalEmploymentStandardsBudgetReserveBankTaxofficeOpsPri.htm>

46 Further, as the Full Bench acknowledged in the context of the mining industry in the 20 June Decision, work in remote locations under extended roster cycles has some unique requirements. These observations are equally true to the hydrocarbons industry. These unique requirements should be accommodated under the HIUA.

47 In particular, the modern award must accommodate the following prevailing practices within the upstream hydrocarbons industry.

12 ordinary working hours per day

48 The working of 12 ordinary hours per day is not just a prevalent practice in the hydrocarbons industry, but it is an industry norm. This is the case for both day workers and shift workers and for work performed offshore and onshore.

49 Based on a review of its members in the upstream hydrocarbons industry for the purposes of this proceeding, it is estimated that approximately 90% of the employees who will be covered by the HIUA are performing 12-hour working days. In the case of onshore operations, the prevalence is at least 70% and in many operations it is 100%. Typically, the employees who are not engaged on 12 hour shifts are the maintenance workforce, which usually constitutes no more than 10% of the operation. In the case of offshore operations, typically all employees (100%) work 12 hour working days. It is appropriate that the modern award reflect this reality of the industry.

50 The capacity to work up to 12 ordinary hours per day should be included for all employees. Employers should be able to continue to set existing arrangements as a matter of right. It is not appropriate that the working of 12 hours should

require the consent of individual employees or the majority of affected employees in circumstances where this is a substantial departure from both existing arrangements and the needs of a flexible modern industry. 12-hour shifts are an accepted feature of the industry.

Extended rosters and work cycle arrangements

51 Extended rosters and “work cycles” are also industry norms in the hydrocarbons industry. In general terms, a work cycle roster (also referred to as a compressed roster or extended roster) is made up of a period of working days (“**on duty period**”) and a period of non working days (“**off duty period**”), which in some cases may include travel and/or leave as discussed below. As indicated above, the rosters typically operate on the basis of either 12-hour shifts or 12 hour day work.

52 There are an infinite number of variations of such rosters operating in the industry. Extended rosters operate for a period of up to 28 weeks. Typically rosters fall into one of three categories:

(a) ***Greater than even time rosters:*** This is where there are more working days than non working days under the roster cycle. This reflects commonly with more typical shift roster arrangements. For example, some employees may be required to work 4 days on/2 days off/3 days on/3 days off.

(b) ***Even time rosters:*** This is where there is the same number of working days and non-working days in the roster cycle. This is an extremely prevalent roster arrangement in the hydrocarbons industry. The most

common even time rosters are 14 days on/14 days off, 21 days on/21 days off and 28 days on/28 days off. Other variations include 7 days on/7 days off in some Bass Strait operations, more extended versions such 35 days on/35 days off (although these are typically worked by expatriates in Australia) and rotating rosters involving 4 days on/4 days off then 5 days on/5 days off.

- (c) ***Less than even time rosters:*** This is where the number of working days is fewer than the number of non-working days. A common example of such a roster is 3 weeks on/3 weeks off/3 weeks on/6 weeks off. However there are others.

53 It is crucial that the modern award accommodate the various forms of extended roster that exist in the industry currently. Should it not do so, this would involve a very substantial disruption to existing operations and the potential for significant cost increases.

Rostering annual leave and public holidays

54 While different workplaces manage annual leave differently, a feature of workplaces operating under extended rosters is that annual leave is taken in accordance with the roster. Further, employees are commonly required to work on public holidays that fall during on-duty periods. The modern award should accommodate this reality of the modern industry.

55 There are various ways in which annual leave is dealt with by different industry participants.

- (a) In some cases, the off-duty period of the work-cycle included the period of four or five weeks leave over the course of the year. Under the 3 weeks on/3 weeks off/3 weeks on/6 weeks off roster, it is almost exclusively the case that employees are required to take annual leave as part of their rostered off period. As a result, annual leave does not accrue in addition to the off-duty period. Over the course of the year, the employee takes his or her annual leave benefit.
- (b) In other cases, leave is required to be taken at particular times or in amounts that reflect the work cycle. For example, if an employee works a 7 days on/7 days off roster, an employee is typically required to take a period of leave of no less than 14 days. Further, it is generally the case that where leave is taken, the period of leave is made up of both an on-duty period and an off-duty period. In this example, the period of 14 days leave is made up of 7 working days and 7 non-working days.

56 Similarly, where public holidays fall during an on-duty period, employees are required to work during them. Where employees work shift work, or in circumstances where employees work in remote locations (where the number of employees available to work is finite, where travel arrangements for them to access the workplace involves substantial travel and where such arrangements are not readily substituted), it is appropriate that the award provide that a requirement to work on the public holiday is a reasonable one.

57 It is not appropriate to apply a uniform or commonplace arrangement for the taking of annual leave and public holidays to this industry in the circumstances.

The leave and public holiday provisions under the modern award must accommodate the various features of the modern industry.

Annualised salaries

58 Annualised salaries are again a universal feature of the modern industry. Under such annualised salary arrangements, there is compensation for the extended hours worked over the course of the roster cycle, annual leave and all other benefits that are required to be paid under underlying industrial instruments.

59 This has been the case in the industry for a great many years and at least since the early to mid 1990's. As a result, there is a substantial disconnect between existing award regulation and the reality of the modern industry. In these circumstances, it is unsurprising that existing awards do not universally recognise this practice. However, annualised salaries are a feature of certain existing awards in the industry and for this reason should be retained. In any event, given it is a pervasive and universal practice within the existing industry, it is submitted that it is an appropriate and essential arrangement for the HIUA.

60 In respect of the drilling industry, a "daily rate" is paid for each day of the on-duty period based on an all-up calculation of underlying benefits under the award on an annualised basis. For example, assuming an even time roster, a daily rate is calculated based on the annual number of working days (being 182.5). The daily rate arrangement reflects the highly flexible nature of drilling work. Employees are paid a daily rate when they are working and are not paid when they are not. Again, annualised salary arrangements are necessary to permit this existing practice to continue. Employees would not be disadvantaged if appropriate safeguards were in place, as is proposed under the HIUA.

REVIEW OF PROPOSED HIUA CONTENT

61 The rationale for the content of the proposed HIUA is set out below.

Clause 1 - Award Title

62 The proposed award title recognises the Commission's approach to naming awards in the Priority Awards and specifically recognises this award deals with the upstream part of the hydrocarbons industry.

Clause 2 – Commencement date

63 AMMA has adopted the Commissions approach used in the Priority Awards.

Clause 3 – Definitions and interpretation

64 This Clause provides the definitions of terms used in the award. Consistent definitions have been used, unless industry specific detail is required.

Clause 4 – Coverage

65 The submissions concerning the scope of the upstream hydrocarbons industry and coverage is set out in paragraphs 8 to 27 above.

66 Consistent with the drafting style adopted for the Priority Awards, classification descriptors, transitional arrangements and the parties bound by the award are identified separately in schedules to the HIUA.

Clause 5 – Access to the Award and the National Employment Standards

67 This clause reflects the content and form used by the Commission in the Priority Awards.

Clause 6 – The National Employment Standards and this award

68 This clause reflects the content and form used by the Commission in the Priority Awards.

Clause 7 - Award Flexibility

69 Clause 7 adopts the Commission’s model flexibility clause with the addition of four additional matters in Clause 7.1. The additional matters are necessary to accommodate the specific circumstances of the upstream hydrocarbons industry. Specifically: arrangements for remote work, the taking of leave, the taking of public holidays and payment of leave loading.

70 It is appropriate that the model flexibility clause permit individual agreement in relation to these matters. It would ensure that particular arrangements for remote work and work cycles can be agreed with an individual employee. While this may be possible under other facilitative provisions under the HIUA, the capacity to do this through the model clause should be unambiguous. The proposed amendments are considered in turn below.

Remote work

71 In the 20 June Decision, the Full Bench noted at pp 15 -16:

‘Many of the operations in this industry [mining] are in remote locations not reasonably accessible by daily commuting. The peculiarities of working in these locations are likely to give rise to considerations about terms and conditions that may or should be dealt with in a modern award, that may well not arise in any of the other priority industries. The industrial issues that have arisen over the years in relation to the terms and

conditions of employment of mining industry employees require some particular considerations different to those of employees engaged in more central work locations operating on more conventional ordinary weekly hours.'

72 The same observation can be made in the upstream hydrocarbons industry. The exploration, development, extraction and separation of hydrocarbons (as defined in the scope clause) typically do not occur near capital city locations. Such operations typically occur in sea based platforms, mobile offshore and onshore drilling rigs and in remote onshore facilities. The flexibilities associated with remote work are an essential feature of the upstream hydrocarbons industry.

73 In order to deal with the exigencies of remote work, the model award flexibility clause has been varied to allow an employer and employee who are engaged in remote work (as defined in Clause 5) to vary the application of any of the modern award provisions that affect remote work arrangements.

The taking of leave

74 On 18 December 2008, the Request was amended to provide that a modern award may allow an employer to require employees, or allow employees to be required, to take paid annual leave, but only if the requirement is reasonable.

75 As explained above, a large proportion of the upstream hydrocarbon exploration and operation employees work rosters where the annual leave has been incorporated into the roster or is typically taken in accordance with the roster cycle.

76 Clause 23.3 of the HIUA provides a mechanism for employers to require employees to take leave in accordance with the roster. AMMA contends that employees and employers ought to be able to make individual workplace flexibility agreements to deal with the taking of leave in a manner different to the roster pattern to suit their particular circumstances. This would (for example) allow an employer and employee to agree to vary the leave taking arrangements to allow an employee to take 4 consecutive weeks leave to travel overseas.

The taking of public holidays

77 As discussed above, public holidays which occur during a roster cycle are invariably worked. Whilst some employers compensate the employee by the payment of penalty rates other workplaces may provide a substitute day. This is appropriately the subject of individual agreement and would provide a mechanism for employees to forgo increased remuneration for additional time off.

Annual leave loading

78 The incorporation of annual leave loading into the hourly, weekly or salaried rates in the upstream hydrocarbons industry is commonplace. The inclusion of leave loading into the award flexibility clause is intended to allow these arrangements to continue where agreement is reached.

Clause 8 – Consultation regarding major workplace change

79 This clause reflects the content and form used by the Commission in the Priority Awards.

Clause 9 – Dispute resolution

80 This clause reflects the content and form used by the Commission in the Priority Awards.

Clause 10 - Types of employment

81 This clause maintains the existing types of employment available under the Key Hydrocarbons Awards in the form adopted by the Commission in the Priority Awards. The provision refers to the working of an average of 38 ordinary hours per week, which is the prevailing upstream standard.

Clause 11 - Termination of Employment

82 This clause reflects the content and form used by the Commission in the Priority Awards, with the exception of clause 11.3, where a provision has been added to provide that time off during a notice period to seek other employment may not be provided where an employee cannot be replaced. This is because the resources available in remote locations are often finite. An employee located in a remote location may simply be required to work because there is no-one else available.

83 It should also be clear that even where time off can be accommodated, the employer is not required to meet the burden of repatriating an employee from an off shore platform or remote onshore facility other than in the normal course of the employee's roster.

Clause 12 - Redundancy

84 This clause reflects the content and form used by the Commission in the Priority Awards; with the exception that clause 12.4 contains the same proviso proposed for clause 11.3 above.

Clause 13 - Classifications and Minimum Rates

85 The draft HIUA proposes a new broad-banded classification structure to cover the range of work under the new modern award. It is submitted that the existing classification arrangements do not meet the requirements of award modernisation and should not be retained.

The new structure

86 A new classification structure is needed to consolidate the various existing classification structures under the Key Hydrocarbons Awards. These classifications presently are highly fragmented and do not meet the requirements of an appropriate career based stream for a modern award.

87 Many classifications are merely a job title with no description of the work covered. This is not appropriate for an award of general application. Other classifications are outdated or duplicate work that is covered by different areas of the award. For example, in the different parts of the hydrocarbons award there are different classifications and rates of pay for the classification “utility person”. Such duplication is obviously undesirable and should not be a feature of the modern award.

88 In order to provide for a modern career path, it is appropriate that the modern award provide a simple, broad-based classification structure, with clearly delineated levels based on work of different complexity and work value. The work covered under the classification structure reflects the work that is covered under existing hydrocarbons upstream awards, within the coverage of clause 4.1. It is not proposed to expand the classification structure beyond work that is currently traditionally award-covered.

89 In developing the new structure, AMMA has been guided by the following principles:

- (a) the structure should be simple and easy to apply in practice to the various parts of the upstream hydrocarbons industry; and
- (b) existing award content should not be retained where it is inconsistent with (a) but should be used as a guide for development of the new classification structure, including classification descriptors and rates of pay that have been properly fixed consistent with the minimum rates adjustment principle.

90 Having regard to these principles, the HIUA proposes the following:

- (a) An eight-level structure of broad-banded classifications, including an entry level and a progressive 7 level structure. A generic descriptor will be implemented for each classification to reflect the nature of the work to be performed at each level and to provide progression steps for employees working in the industry;

- (b) The relativities for the eight-levels will range from 85% to 125% and will be set having regard to existing classifications for equivalent work in awards that have been assessed in accordance with established wage fixing principles. The rates of pay for the levels in the simplified classification structure should be properly fixed, and a relativity for the work described needs to be established having regard to its relationship with the 100% level for the Manufacturing and Associated Industries Award 2010;
- (c) The work covered will be divided into streams based on function, which may access the levels appropriate for the work performed. This is explained below. The streams include industry services, onshore drilling, offshore drilling, operations and processing, and modification and maintenance trades employees.

91 Accordingly, the HIUA includes the following classification levels.

Level	Name	Relativity
Entry Level	Introductory	85%
Level 1	Basic	90%
Level 2	Intermediate	95%
Level 3	Competent	100%
Level 4	Advanced	105%
Level 5	Advanced specialist	115%
Level 6	Dual trade/ Instrumentation	120%
Level 7	Advanced Dual trade/Instrumentation	125%

92 The HIUA needs to achieve a simple classification structure that can be used across the various areas of work or streams that apply in the upstream hydrocarbons industry. These streams should be recognised separately in the classification structure with a non-exhaustive list of the types of work they encompass. The proposed work streams include:

- (a) **Industry Services stream:** this captures work performed by the various support functions of the industry, including clerical and administrative labour assisting drilling employees and the other functions by the award and performance of general plant, stores, materials, workshop, warehouse and cleaning functions. This is an existing feature of current awards. For example, the Hydrocarbons Award contains classifications for utilities persons, caterers, various general hand classifications and medics classifications.
- (b) **Onshore drilling and haulage stream:** this captures employees who perform onshore hydrocarbon drilling activities. This stream captures what is presently covered by the Onshore Drilling Award.
- (c) **Offshore drilling stream:** this captures work presently regulated by the Offshore Platform Drilling Award and the Offshore Mobile Drilling Award.
- (d) **Operations and processing stream:** this captures employees who are involved in operating processing plant and equipment in the hydrocarbons industry, including plant and equipment used in extraction, separation, production, processing, piping, storage, distribution, delivery, maintaining plant productivity and laboratory technicians. This stream reflects the

broad production processing classifications under the Hydrocarbons Award.

- (e) **Maintenance and modification stream:** this captures trades qualified employees performing maintenance and modification work. It reflects the trades work covered by various Key Hydrocarbons Awards.

93 The stream is a separate concept from levels in that a particular stream can be accommodated at more than one level in the classification structure. The classification levels would identify where they would apply to a particular stream. For example:

- (a) Operations technicians are typically classified into one of 3 or 4 levels. (This is true both under the Hydrocarbons Award and in practice, although the current practices involve wage groupings that are unrelated to existing award arrangements. Existing operations typically use a 4 level structure for offshore employees and a 3 level structure for onshore employees. While there is no universal practice, it is submitted that this is a sensible basis to classify this work under the modern award). The levels have regard to the level of experience and complexity of the work performed by the operations technicians. It is appropriate the modern award reflect this arrangement. Consistent with the common existing practice that there should be 3 or 4 levels of production operator, the operations and processing stream is accommodated in levels 1 to 4 of the existing structure. By contrast, the Industry Services stream would access levels up to level 3 but not above.

- (b) Employees in the onshore drilling stream can access levels 1 to 3, which reflects the work that is currently performed below full trade qualification. Offshore drilling employees can access work through to level 4, which reflects the more complex work value of work performed by offshore employees and recognises the value attributed to this work under existing awards (noting that there is a general disparity between the wage rates applicable to onshore drilling and offshore drilling employees under existing awards).
- (c) The Modification and Maintenance Trades stream, which includes only trades employees, would only apply to classification levels properly fixed above the 100% level for the Manufacturing and Associated Industries Award 2010 and may access Levels 3 to 7 under the proposed structure.

Translation arrangements

- 94 It is proposed that a translation table be provided for employees to understand where existing classifications are to be classified under the new structure. Appropriate arrangements can be included on a transitional basis to ensure that employees are not disadvantaged.

Apprentices, trainees and juniors

- 95 The HIUA has adopted the Commission approach in the Priority Awards in determining rates for Junior Employees, Apprentices (School based and non-school based), Trainees and Supported Wage employees. It is necessary for the HIUA to cover employees working under Group Training Schemes. The

Commission has foreshadowed that it intends to review the provisions dealing with apprentices and trainees in due course. AMMA supports this review.

Salary sacrifice

- 96 At Clause 13.6 a salary sacrifice provision has been included. This is a common feature of employment arrangements in the industry, particularly for vehicles and superannuation. AMMA proposes that this flexibility should be included in the modern award where employees wish to take advantage of it. If this provision is not to be included, it would not be possible for employees to elect to take advantage of the tax concessions for such benefits.

Clause 14 - Allowances

Prevailing allowances

- 97 When setting the safety net of terms and conditions it is necessary to focus on allowances that have a common application for the industry. The allowances with universal application in the upstream hydrocarbons industry are:

- (a) Leading Hand Allowance;
- (b) Electrical Licence.
- (c) District Allowances
- (d) Living Away from home allowance
- (e) Tool Allowance

98 This clause provides for allowances drawn from the base awards. In proposing particular allowances and levels, AMMA has been guided by the key awards.

Leading hand allowance

99 The proposed Leading Hand Allowance has been drawn from the allowance provided at clause 9.1.1 of the Hydrocarbons Award, which provides for a different rate based on the number of employees supervised. This allowance is generally confined in its application to maintenance trades employees.

100 The rates have been set having regard to the existing allowance, ranging from \$18.10 per week for supervision of 3-10 employees; \$28.60 for supervision of 11-20 employees and \$36.20 for supervision of more than 20 employees.

Electrical licence allowance

101 The proposed Electrical Licence allowance of \$18.40 per week reflects the Manufacturing and Associated Industries and Occupations Award 2010 standard.

Living Away From Home allowance

102 The proposed Living Away From Home Allowance (**LAHA**) detailed in Clause 14.3(c) is intended to compensate employees for being required to live away from their normal place of residence.

103 The proposed rate of \$32.75 per day is set having regard to the rate for similar provisions in the Key Hydrocarbons Awards, which range from \$21.75 - \$43.70 per week.

Tool allowance

- 104 The tool allowance in Clause 14.4(b) is designed to compensate employees who are required to supply and maintain trade tools. The proposed rate reflects the Manufacturing and Associated Industries and Occupations Award 2010 standard.

Industry allowances

- 105 The proposed industry allowance is intended to replace the various special rates and disability payments arising under the Key Hydrocarbons Awards. It is sensible to rationalise these allowances under a modern award.
- 106 An industry allowance would replace all such payments for all aspects of work in the industry, including but not limited to the location and nature of upstream hydrocarbon industry operations, dislocation, clothing, boiler cleaning, dirt, wet, height, fumes, heat, cold, confined space, petro-free and mud and all other disabilities not expressly dealt with under other clauses. Several of the Key Hydrocarbons Awards provide for a single allowance to be paid in compensation for all special rates and disability payments, although many of these provide levels of benefit connected with the particular circumstances and roster arrangements of individual sites or enterprises.
- 107 Having regard to the present industry arrangements (which vary from \$29.40 per week to \$102 per week for one particular enterprise but where the prevailing level of benefit is in the order of \$35.00 per week) and the quantum of special rates under the existing awards, it is proposed that the industry allowance should be set at \$38.00 per week.

District allowance

- 108 The District Allowances set out in Clause 14.3(b) are intended to preserve district allowances, where employees presently are entitled to receive them. The form of the clause has been drawn from the Commission's approach in the Priority Awards.

Meal allowance

- 109 The meal allowance for overtime work in Clause 14.4(a) is designed to compensate an employee who works so much overtime so as to entitle them to an additional meal break, provided that the employer does not already provide meals and the employee was not provided with advance notice or is in receipt of a LAHA under Clause 14.3(c).

- 110 Clause 14.5 provides for the method of varying expense related allowances. The form of the clause has been drawn from the Commission's approach in the priority awards.

- 111 Clause 14.6 provides for the preservation of Accident pay and journey insurance in line with the Commission's approach in the priority awards.

Place of assembly and fares

- 112 Clause 14.7 is unique to the upstream hydrocarbons industry. It requires that where remote work is performed, the employer shall nominate a place of assembly and will provide travel between the point of assembly and the workplace. In addition the provision provides that compensation for up to four

hours travelling time is included in the base rate of pay, additional travel time (up to 12 hours) will be remunerate at the employees ordinary hourly rate.

- 113 Clause 14.8 is a clause unique to the upstream hydrocarbons industry and provides that an employer may deduct the cost of travel for the first journey from the place of engagement to the workplace, provided that if the employee remains with the employer for a period of not less than 6 months the employer shall refund any costs deducted

Clause 15 – Payment of Wages

- 114 This clause reflects the Commissions approach in the Priority Awards

Clause 16 – Stand Down, lay up and storms

- 115 The Key Hydrocarbons Awards contain industry specific arrangements for stand-down in certain circumstances, including where a drilling rig is laid up for repairs or if work is unable to be performed as a result of storm activity. The Commission has indicated that it would consider the need for stand down provisions in due course. However, these industry specific arrangements should be retained.

Clause 17 - Annualised Wages

- 116 This clause allows an employer to pay a salary or a composite hourly rate in lieu of some or all of the wages, allowances, loading and penalty rates under the HIUA.
- 117 As indicated above, the payment of an annual salary is the prevailing method of payment of employees in the hydrocarbons industry. The modern award should recognise this arrangement. Further, the capacity to pay annualised wages is a

- feature of certain of the Key Hydrocarbons Awards (see for example Part IV, clause 7 of the Hydrocarbons Award).
- 118 This provision should be available under the modern award. In the absence of this capacity to do so, employers may be required to make separate payments of the various benefits falling due under the award in each salary period. This would disturb existing arrangements and is not appropriate where the payments during on-duty periods and off-duty periods would differ substantially. For example, where the pay-period is fortnightly and an employee works a 14/14 roster, the 14 day on period would require substantial allowance and penalty payments to be made that would not apply at all during the off-duty period. This would cause additional red tape and administrative overheads, which is inconsistent with the award modernisation principles and guidelines.
- 119 Consistent with the requirements of the legislation (see s.576J(1)(f)) the proposed HIUA clause contains appropriate safeguards. Specifically, in order to protect employees against disadvantage, there is a requirement that the award entitlements which are incorporated into the salary must be identified together with the agreed salary level, and that the salary arrangement must not result in an employee being paid less than what their entitlements would have been had the salary arrangement not been made.
- 120 In order to allow for the calculation of NES entitlements which are based on the 'base rate of pay', clause 10.3 provides a mechanism to calculate the base rate of pay. Similar provisions are provided for the calculation of a composite hourly rate for employees paid in this manner.

Clauses 18-22 - Hours of Work, Maximum Weekly Hours, Overtime and Penalty rates, Rostering and Breaks

- 121 AMMA contends that the modern award must accommodate the continued application of existing work rosters and practices upon implementation. It should also maintain flexibilities under the Key Hydrocarbons Awards or as required by the industry for the future, whether presently used or not. The prevalence of work cycles, extended rosters, and annualised salary arrangements demonstrate the high flexibility needs of the industry on this issue. It also demonstrates that there is a need for hours to be averaged over the duration of an extended work cycle.
- 122 The hours of work provisions have drawn upon existing arrangements in the Key Hydrocarbons Awards and then reviewed against the current operations of the industry. Consistent with the objectives in the Request, they are simple to understand and to apply. Further, they promote flexible work practices and the efficient and productive performance of work. They reflect the practice of the modern hydrocarbons industry and are essential to it.
- 123 The Key Hydrocarbons Awards provide for the working of 38 ordinary hours in a week and, in the case of work cycles, the average ordinary hours are calculated by multiplying the number of weeks in the cycle by 38.
- 124 Drawing upon arrangements in existing Key Hydrocarbons Awards, the requirements of the modern industry demonstrate that the following arrangements are appropriate:

- (a) The capacity to average the ordinary hours of work over periods up to and including 26 weeks.
- (b) The capacity to work ordinary hours between 6.00am and 6.00pm with a mechanism to vary the spread by agreement.
- (c) The ability to work up to 12 ordinary hours on each day (subject to the averaging provisions).
- (d) The ability for the employer to roster work according to operational requirements and to vary the roster.
- (e) The ability for an employer to introduce and vary shift work (including continuous shifts).
- (f) The requirement to reasonably require an employee to work on public holidays during the on-duty period.
- (g) The requirement to work reasonable overtime at overtime rates and time off in lieu arrangements.
- (h) The right to vary or suspend a roster in an emergency situation.

125 The hours of work provisions contained in the draft HIUA have been drafted to give effect to the present levels of flexibilities detailed above. In addition, provisions have been included to require:

- (a) the payment of loadings for the performance of ordinary hours on weekends and public holidays;

- (b) the payment of overtime penalties for day, shift and continuous shift workers for work in excess of ordinary hours;
- (c) the payment of shift penalties for shift and continuous shift workers; and
- (d) the provisions of meal breaks, and breaks between shifts.

Clause 23 – Annual leave

126 The requirements of the industry in relation to annual leave are set out above in paragraphs 54 to 57. It is appropriate that the modern award provide for the following arrangements in relation to annual leave:

- (a) Clause 23.3 allows the employer to determine how the leave is taken during the roster subject to the requirement that the arrangement is reasonable. Where an employer elects to include annual leave as part of the rostered off period, it is appropriate that employees can be required to take such leave. This is consistent with the revised terms of the Request.
- (b) Clause 23.5 provides that the quantum of leave loading will be either the wages that the employee would have received for working during the annual leave period or a loading of 17.5% of their minimum rate of pay whichever is the greater. This reflects the content of the Key Hydrocarbons Awards.

127 Further, the annual leave provisions retain the requirements under Key Hydrocarbons Awards that periods of annual leave include both rostered working days and rostered off days, based on the roster cycle. For example, for an employee taking 4 weeks leave, 14 days should be counted from rostered

working days and 14 days unpaid rostered off days, based on their roster. This reflects current award benefits (see, for example, Section B, clause 3 of the Hydrocarbons Award).

128 They also retain the requirement in certain Key Hydrocarbons Awards that employees may be required to take leave in blocks that reflect the roster arrangement at their workplace. For example, where an employee works a 14 day on/14 day off roster, it is appropriate that they should be required to take 4 weeks leave, reflecting the roster cycle. Again, the 4 weeks leave would be counted as 14 working days and 14 non-working days in the cycle.

129 The effect of the NES is that unless such industry detail concerning the taking of leave is provided in a modern award, the flexibilities will not be available. This would fundamentally alter extended roster arrangements in many hydrocarbons operations and would result in a substantial practical impact on the industry and increased costs.

130 The balance of Clause 23 generally reflects the approach of the Commission in the Priority Awards.

Clause 24 – Personal/Carers leave and compassionate leave

131 This clause reflects the approach of the Commission in the Priority Awards.

Clause 25 – Community Service leave

132 This clause reflects the approach of the Commission in the Priority Awards.

Clause 26 – Public Holidays

133 This clause reflects the approach of the Commission in the Priority Awards. However, a provision has been included to provide that it is reasonable for an employer to require an employee working in remote locations and employees working on shiftwork to work on a public holiday which falls during an on duty period. This recognises the practical realities of the industry discussed above.

Schedule A - Classification structure

134 Classification descriptors for the eight-level structure are intended to be implemented under the HIUA as described above.

135 These descriptors are based on existing descriptors for work of equivalent value in existing awards with properly fixed minimum rates.

Schedule B – School Based apprentices

136 Consistent with the Commission’s approach in the Priority Awards, schedule B will contain the model clause for supported wage arrangements for school based apprentices. This should also be reviewed having regard to the requirements for Group Training Schemes.

Schedule C - Supported wage arrangements

137 Consistent with the Commission’s approach in the Priority Awards, schedule B will contain the model clause for supported wage arrangements for employees with disabilities.

Schedule D - Transitional arrangements

138 Transitional arrangements for the HIUA are set out in Schedule D.

139 Ultimately the need for transitional arrangements will depend on the final content of the modern award for the upstream hydrocarbons industry and the preferences of industry participants. As a result, the HIUA foreshadows an approach to transitional arrangements at an in principle level only. AMMA recognises that the Commission will review transitional arrangements in mid 2009.

140 The potential mechanisms for transitional arrangements for the HIUA are described below, although these are intended to be subject to the Commission's determined approach.

141 AMMA has included the following potential transitional mechanisms in the HIUA:

- (a) savings provisions to ensure that:
 - (i) salaries, rates of pay and allowances paid or applied at the time of commencement of the HIUA are not reduced or adversely impacted by the making of the HIUA; and
 - (ii) workplace operational flexibilities and facilitative arrangements applied or available at the time of the commencement of the HIUA are not reduced or adversely impacted by the making of the HIUA.
- (b) principles for the translation of existing classifications; and
- (c) phasing-in arrangements, to provide a progressive transition for particular benefits if necessary.

142 Ultimately the need for transitional arrangements will depend on the final content of the modern award for the hydrocarbons upstream industry and the preferences of industry participants.

Principles for transitional arrangements

- 143 The new safety net established by the HIUA contains different terms and conditions in various respects from those in existing awards and NAPSAs.
- 144 The Request provides that the creation of modern awards is not intended to:
- (a) disadvantage employees; or
 - (b) increase costs for employers.
- 145 There is the potential for conflict between these objectives where the level of the safety net benefit established by the HIUA differs from the current safety net in existing awards and NAPSAs. Transitional arrangements must balance these objectives for both monetary and non monetary terms and conditions.
- 146 The proposed transitional arrangements do this in a reasonable manner, that will permit a measured transition to the HIUA.

Savings provisions

- 147 The effect of the savings provisions is to preserve rates, conditions and flexibilities that apply at the time the HIUA commences and are inconsistent with its terms.
- 148 Where the level of a monetary benefit set by a modern award is less than the benefit set by existing awards, arrangements must be put in place so that employees are not disadvantaged. In general terms, where an existing award provides for a higher level of benefit for employees, the most straightforward

approach to a transition arrangement is to preserve that higher level of benefit until the safety net established by the modern award increases beyond it.

149 Similarly, where flexibilities or facilitative arrangements apply, such arrangements should not be disturbed by the making of the HIUA.

150 These savings arrangements are reasonable and consistent with the Request and established principles.

151 The Commission has considerable past experience with such measures to introduce changes to the level of the safety net of minimum terms and conditions. Preservation arose under the minimum rates adjustment principle used by the Commission for the purpose of establishing properly fixed minimum rates for many years. For example, the principles for the conversion of awards which do not contain properly fixed minimum rates (**Conversion Principles**) established by the Full Bench in Print [Q7661]. Under the Conversion Principles, where it is found that an existing rate was higher than a properly fixed minimum rate, it was appropriate to identify the difference as a residual amount to be absorbed over time.

Translation of classifications

152 Under AMMA's proposal, the HIUA will be based on a simplified 8 level classification structure.

153 It is proposed that conversion tables would demonstrate how classifications will translate into the new structure. The following principles will apply to the use of the conversion tables:

- (a) they will only be relevant to employees of a particular employer who are employed at the time the HIUA commences and whose employment is subject to one of the awards superseded or replaced by the HIUA (ie. awards displaced by workplace agreements or collective agreements will not apply);
- (b) an employee satisfying these criteria and who is employed under an award will receive whichever is the higher base rate for their classification for the transition period (5 years) after which time they will be entitled to the base rate in the HIUA. The rate of pay will be phased-in over the transition period such that at the end of the 5 year transition the award base rates have equalised; and
- (c) the base rates in the conversion tables will be adjusted for movements in the Federal Minimum Wage.

154 The differences in wage rates largely arise from having multiple classifications in multiple awards as a result of state-based differences. This approach protects existing base rates where they are higher than the HIUA. However, the impact of differential rates during the transitional period is limited to the class of employees who are actually immediately affected because their actual entitlements are set out in an award or NAPSA. Statutory entitlements for employees who are employed pursuant to a workplace agreement are protected in that instrument which must, by definition, pass a no disadvantage test against the relevant award or NAPSA.

Phasing-in arrangements

- 155 There are two circumstances where phasing in may be appropriate:
- (a) where a monetary benefit is established by a modern award that is greater than a present level of benefit under an existing award, transitional arrangements must be put in place to avoid increased costs to employers; and
 - (b) where a modern award sets non monetary terms and conditions that are different from prevailing arrangement under existing awards, a transitional arrangement may be appropriate to balance the competing aims of avoiding disadvantage to employees and increased costs to employers.
- 156 Similarly, where the modern award safety net is higher than the previous safety net, a method of phasing in change should be implemented. While the difficulty with this course is that certain employees would not receive the full benefit of modern award safety net for the duration of the phasing in period, this must be balanced against the objective to avoid increased cost for employers. Such an approach is likely to be appropriate in the present case as it would ensure that employees are not disadvantaged in the short term and would enable any increase in costs to employers to be borne over time as the safety net increases.
- 157 The phasing in of monetary benefits is an approach recognised by the Commission. Under the Statement of Principles that regulated the Commission's functions in establishing and maintaining the safety net prior to 27 March 2006, the Commission required that adjustments to the safety net increased actual costs should not all occur immediately. For example. Principle 8 required that

where multiple safety net adjustments should generally have a twelve month gap between respective adjustments. Again, in 2005, safety-net adjustments were delayed for Victorian employers following the introduction of common rule awards in that State. Such phasing-in measures were also adopted in relation to previous exercises of award simplification, see for example the decision of Vice President Ross in *Print* [S5616].

158 Where particular work arrangements or conditions under an existing award are different from those set under the modern award, there is a risk that the existing arrangement will breach the terms of the modern award. The most simple method of providing for transition is simply to delay the implementation of the modern award framework for a period of time or to permit the parties to continue their existing arrangements during this period and to make appropriate arrangements for transition.

159 Non-monetary benefits that may be affected in this way could include:

- (a) hours of work;
- (b) breaks;
- (c) shift work and rostering;
- (d) process for the application of leave; or
- (e) other work practices.

160 Where appropriate, transitional arrangements should be implemented to ensure that changes required to rectify this situation can be managed in a practical way. The HIUA provides for such matters to be included in Schedule 3 if required.

OTHER MATTERS

Superannuation

161 The proposed award does not contain a Superannuation Clause. Superannuation is dealt with exhaustively by legislation and other instruments. It is not necessary that the HIUA regulate superannuation. The Key Hydrocarbons Awards do not prescribe a default superannuation fund.

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Christopher Platt

Director - Workplace Policy

AMMA

6 March 2009