

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

Submission of the Australian Mines and Metals Association regarding award modernisation for the Remotely Operated Sub Sea Vehicles (ROV) Award - March 2009

INTRODUCTION

1. The Australian Mines and Metals Association (**AMMA**) make this submission having regard to the Commission's obligations under:
 - a. Part 10A of the *Workplace Relations Act 1996* (Cth) (**Act**);
 - b. the Request from the Minister for Employment and Workplace Relations as revised (**Request**);
 - and
 - c. the National Employment Standards (**NES**).
2. This submission is directed at the remotely operated vehicle occupation (ROV) in offshore oil and gas operations and addresses the following matters:
 - a. the principles relevant to the award modernisation process;
 - b. the appropriate award scope;
 - c. the approach taken to develop safety net content; and
 - d. the content of particular clauses.

Relevant principles

3. In performing its award modernisation functions, the Commission must have regard to the requirements outlined in Paragraph 1.

4. In addition, various Statements and Decisions of the Full Bench provides guidance in relation to how these requirements should be met in developing modern award(s).
 - a. Statements dated 30 January 2009; 23 January 2009; 12 September 2008; 3 September 2008
29 April 2008; and
 - b. Decisions dated 19 December 2008; 20 June 2008
5. AMMA has had regard to this material in developing their submission in respect of the issues outlined in Paragraph 2.

SCOPE OF THE MODERN AWARD

Coverage principles

6. Based on the requirements of the Act, the Request and relevant Statements and Decisions, AMMA submits that a modern award for the ROV occupation 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, certainty and fair safety net);
 - ii. the matters the Commission must have regard to in s.576B of the Act;
 - iii. the object 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)).

The above objectives must be balanced having regard to the circumstances of the industry or occupation under consideration and its historical award regulation. A key focus of this process is to establish awards which together with the NES should form a true safety net that is appropriate for the circumstances of each industry or occupation.

Regulation of similar systems of work

- b. In modernising awards regard should be had to whether the occupations, industries, sectors, branches in question to be covered by a modern award are similar in content and operation.
- c. The award modernisation process should not introduce from one branch or sector of the industry to another, particular terms and conditions which have a different background, form, content or structure or regulate different systems or methods of work. This could adversely effect cost structures leave arrangements, flexibilities etc, that have been tailored for the occupation or industry. This would be contrary to the requirements of the s576A 2(c) and s2 (c) and (d) of the Request.

Historical award regulation

- d. It is consistent with the objectives of the Request, to recognise the historical boundaries of the occupation or industry and the peculiar circumstances. Where an industry has been regulated

by awards that have a particular origin or history and regard to the specific needs of the sector or branch in the industry, it should remain so. This is consistent with section 576A (2)(c) of the Act in that to do otherwise could result in an adverse economic impact and be unproductive.

- e. The Full Bench accepted this approach in respect of coal mining (see paragraphs [15] – [18] of the 20 June 08 Full Bench Decision).

Views of the parties

- f. The views of industry participants on whether particular industries sectors or branches of an industry should be or not be part of the maritime industry should be given weight. The Full Bench has previously found it appropriate to give weight to the views of the parties (see paragraphs [10], [13] and [95] of the Full Bench Decision 20 June 08).

Full Bench Decision 19 December 08

- g. The Commission is required to have regard to the desirability to reduce the number of awards in the workplace relations system and applying to employees and employers. This could be done by bringing sectors or branches of industries together into one award. In some industries this would be impractical (Paragraph 12 Full Bench Decision 19 December 2008).
- h. In the retail industry the Commission decided there will be a number of modern wards covering separate sectors. The Commission placed significant reliance on not disadvantaging employees or leading to additional costs to employers and that by making awards for sub-sectors it would not result in additional awards applying to a particular employer or employee (Paragraph 285 Full Bench Decision 19 December 2008).

Occupational Based Awards

- i. Modern awards are to be primarily along industry lines but can also be along occupational lines as the Commission considers appropriate (see paragraph 4 of the Request)
- j. In considering an occupational award the Commission has indicated, in respect of clerical employees, that when each industry is considered it is necessary to consider all classes of award covered employees and the extent to which it is appropriate to have those employees covered by an award with industry wide application. (See paragraph 220 19 December 08 Full Bench Decision)

- k. In so doing issues of relevance should include the number of awards applying to an employer, cost and any disadvantage.
7. The coverage provision of the proposed modern ROV occupation award has been developed consistent with these principles.

ROV Award Coverage

8. The ROV occupation is currently separately regulated by a federal occupational award. AMMA proposes to maintain this approach. The reason in support of this include:
- a. Paragraph 4 of the Request – allows for it;
 - b. The historical regulations of this Occupation;
 - c. The requirements of s576A 2 (c) - economically sustainable;
 - d. The disparate nature of the operations and terms and conditions of employment in the current ROV award with other maritime or oil and gas awards;
 - e. Not to disadvantage employees or increase cost to employers;
 - f. It does not increase the number of awards applying to employers or employees; and
 - g. It is appropriate to do so have regard to the circumstances of the occupation and the employers that employ these employees.
9. AMMA has drafted an occupational based modern ROV award for the Commission's consideration. Appendix 1.
10. The proposed awards will apply to employers that meet three requirements:
- a. the employer must be engaged in oil and gas operations;
 - b. the employer has employees engaged in or in connection with ROV operations; and
 - c. the employees are engaged in a classification in the award.
11. This approach maintains the approach used in the current Remotely Operated Sub Sea Vehicles Award 1998 which is an occupational based award.

Other specific exclusions

12. 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. The draft award does this.
13. The Scope or coverage of the awards is a crucial issue in determine the appropriate content of the modern awards and the safety net of minimum terms and conditions for the industry to be covered. Should the scope provision alter, it may be necessary to revisit the content of the proposed modern awards.

APPROACH TO DEVELOPING SAFETY NET CONTENT

14. 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 award coverage proposed; and
 - b. any transitional arrangements where the new safety net established by modern awards is different from the terms and conditions in existing awards and NAPSAs.
15. Both these tasks must be undertaken having regard to the requirements of the Act and the Request.

Principles for the new safety net

16. Employers of ROV operators are covered by a principal federal award and this provided the starting point for drafting the proposed modern ROV occupation award.
17. The award content for each clause of the proposed award has followed the principles below:
 - 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.
 - b. The list of relevant awards published by the Commission is a starting point;
 - c. Any awards should not adversely impact the ability of workplace arrangements at current operations to continue post 1 January 2010.
 - d. Minimum terms and conditions should then be identified to establish a true safety net for matters to be included in the modern award.

REVIEW OF PROPOSED AWARD CONTENT

18. The content rationale of the proposed modern ROV occupational award is set out in Appendix Two.

OTHER MATTERS

Superannuation

19. The current ROV award does not prescribe a default superannuation fund. AMMA's proposed award also does not contain a Superannuation Clause. Superannuation is dealt with exhaustively by legislation and other instruments. It is not necessary that the ROV award regulate superannuation.

Tony Caccamo

Director – Operations

AMMA

6 March 2009

Remotely Operated Sub Sea Vehicles Award 2010

PROPOSED AWARD: 6 March 2009

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SCHEDULE A - TRANSITIONAL ARRANGEMENTSERROR! BOOKMARK NOT DEFINED.

Part 1 - Application and Operation

1 Title

This award is the Remotely Operated Sub Sea Vehicles 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)

base rate of pay has the meaning in the NES

Commission means the Australian Industrial Relations Commission or its successor

cycle work (or work cycle) means a cycle made up of working and non-working days

day means 12 midnight to 12 midnight

designated assembly point means the point from which the employer provides transport to the designated point of embarkation

designated point of embarkation means the point from which the transport to the offshore location is provided

employee has the meaning in the Act

employer has the meaning in the Act

enterprise award has the meaning in the Act

NES means National Employment Standards

Pilot/Technician Grade 1 means an employee appointed as such by the employer and who has had no previous offshore ROV experience but has the necessary educational and technical qualifications to be considered for employment. Such an employee will be on probation for a initial period of three months service and will be eligible for consideration for promotion to Grade II on completion of a further three months service with the employer

Pilot/Technician Grade 2 means an employee appointed as such by the employer and who has been promoted from Grade I or has gained a minimum of six months practical experience in the offshore operation and maintenance of ROVs

Pilot/Technician Grade 3 means an employee appointed as such by the employer and who has been promoted from Grade II or has gained a minimum of 1.5 years practical experience in the offshore operation and maintenance of ROVs, of which a minimum of six months experience will have been gained with the type of equipment for which employment is offered

Senior Pilot/Technician means an employee appointed as such by the employer and who has been promoted from Grade III to be a team leader, responsible for the supervision and co-ordination of personnel and equipment, for the operation and maintenance of ROVs and associated equipment, the execution of work including the completion of operational and technical documentation, and is required to liaise with client representatives

standard rate means the weekly wage for a Pilot/Technician Grade 3 in clause 13.3

- 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, to the exclusion of any other modern awards:
- (a) employers who are engaged in or in association with the operation, utilisation, control, maintenance, installation, repair, and service of remotely operated sub sea vehicles and associated equipment in oil and gas operations; and
 - (b) their employees engaged in the classifications listed in clause 13—Classifications and minimum wage rates, of this award.
- 4.2 This award does not cover:
- (a) an employer bound by an enterprise award with respect to any employee who is covered by the enterprise award; and
 - (b) an employee excluded from award coverage by the Act.
- 4.3 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;
 - (d) allowances; and
 - (e) provisions of Part 6 Leave and Public Holidays.
- 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 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

An employee may be engaged on a full-time, part-time, casual or probationary basis.

10.1 Full-time employment

A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week plus reasonable additional hours in accordance with the NES.

10.2 Part-time employment

- (a) A part-time employee is an employee who:
 - (i) is engaged to work an average of fewer hours than a full-time employee per week over the agreed work cycle; 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.
- (b) For each day worked, a part-time employee will be paid no less than the daily rate of pay for the relevant classification in clause 13—Classifications and minimum wage rates.
- (c) An employer must inform a part-time employee of the ordinary hours of work and starting and finishing times. All time worked in excess of these hours will be paid at the appropriate overtime rate.

10.3 Casual employment

- (a) A casual employee is one engaged and paid as such. A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the average hours required to be worked by the employer per week over the work cycle.
- (b) For each hour worked, a casual employee will be paid no less than the daily rate of pay for their classification in clause 13—Classifications and minimum wage rates, plus a casual loading of 25%.
- (c) The casual loading is paid in lieu of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

10.4 Probation period

An employer may initially engage a full-time or part-time employee for a period of probationary employment for the purpose of determining the employee's suitability for ongoing employment. The employee must be advised in advance that the employment is probationary and of the duration of the probation which is to be either:

- (a) three months or less; or
- (b) more than three months and is reasonable, having regard to the nature and circumstances of the employment.

11 Termination of Employment

Notice of termination is provided for in the NES.

11.1 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.

11.2 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.

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.

Part 4 - Minimum Wages and Related Matters

13 Classifications and Minimum Wage Rates

An employee will be paid the following rates depending on their classification and whether they are currently assigned to offshore or onshore duties.

13.1 Offshore

	Rate per 14 day cycle	Daily rate	Hourly rate
Senior/Pilot/Technician	\$5,365.38	\$383.24	\$31.94
Pilot/Technician Grade 3	\$4,705.73	\$336.12	\$28.01
Pilot/Technician Grade 2	\$4,557.58	\$325.54	\$27.13
Pilot/Technician Grade 1	\$4,415.18	\$315.37	\$26.28

The above rates are fully comprehensive and take account of all disabilities and include payment for standard overtime worked and public holidays and work factors associated with the work wherever it may take place.

13.2 Daily over-cycle payment

	Rate per week
Senior Pilot/Technician	\$845.76
Pilot/Technician Grade 3	\$753.54
Pilot/Technician Grade 2	\$732.36
Pilot/Technician Grade 1	\$712.02

13.3 Onshore

	Rate per week
Senior Pilot/Technician	\$785.70
Pilot/Technician Grade 3	\$698.90
Bench Technician (workshop based)	\$686.93
Pilot/Technician Grade 2	\$680.31
Pilot/Technician Grade 1	\$659.39

13.4 Employee duties

In each of the classifications under this award it is a requirement that an employee must:

- (a) perform work in a fully flexible manner as reasonably required by the employer and in accordance with the employee's ability and competence;
- (b) acquire any skills as reasonably requested by the employer and, where necessary, undertake required training and assist with the training of others; and
- (c) use such tools and equipment as may be required, subject to the limit of the employee's skills and competence and provided that the employee has been properly trained in the use of such tools and equipment.

14 Allowances

14.1 Living away from home allowance

An allowance of 4.3% of the standard rate per day will be paid to each employee for each day or part thereof of their duty period offshore or in circumstances where the employee would normally be working offshore and is temporarily accommodated onshore away from their home. With the exception of annual leave, the allowance will not be payable during periods of leave or authorised absences or during periods in which the employee is specifically engaged on shore based duties including equipment mobilisation or demobilisation where the employee is able to live at home.

14.2 Protective clothing and equipment

Where the employer requires industrial protective clothing and safety equipment to be worn by an employee, the employer will reimburse the employee for the total cost of the purchase of such items. Such purchase, being subject to the presentation of a receipt, will not exceed reasonable standards. The provisions of this subclause do not apply where the protective clothing and safety equipment is paid for by the employer.

14.3 Accident pay

- (a) An employer will pay an employee accident pay where the employee received an injury for which weekly payments or compensation are payable by or on behalf of the employer pursuant to the provisions of the appropriate Workers' Compensation Act.
- (b) Accident pay means a weekly payment of an amount, being the difference between the weekly amount of compensation paid to the employee pursuant to the said appropriate Workers' Compensation Act, and the employee's appropriate ordinary rate as prescribed by this award, or where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.
- (c) An employer will pay, or cause to be paid, accident pay during the incapacity of the employee within the meaning of the said Act until such incapacity ceases, until payments of workers compensation cease, or until the expiration of 52 weeks from the date of injury, whichever event will first occur.
- (d) The liability of the employer to pay accident pay in accordance with this clause will arise as at the date of the injury or accident in respect of which compensation is payable under the said appropriate Act, and the termination of the employee's employment or any reason during the period of any incapacity will in no way affect the liability other than the expiration of the employer's contract with the client of the employer to pay accident pay as provided in this clause.
- (e) In the event that the employee receives a lump sum in redemption of weekly payments under the said Act, the liability of the employer to pay accident pay as herein provided will cease from the date of such redemption.

14.4 Transportation and accommodation (offshore employees)

- (a) At the beginning and end of each on-duty period the employer will provide transport between the designated assembly point and the work site. Employees are required to present themselves at the designated point of embarkation by use of the transport provided by the employer or otherwise at their own expense. If the transport provided is in the form of a hired vehicle, the employee will be responsible for the care of the vehicle and if an accident occurs while the employee is in charge of the vehicle and that employee is proven to be under the influence of drugs or alcohol, the employer will have the right to recover from the employee any cost incurred by the employer resulting from any such accident.
- (b) During the period of duty, employees who cannot reasonably return to their usual place of abode will be provided with reasonable accommodation and meals, or where such accommodation and meals are not provided by the employer, the employee will be reimbursed by the employer for costs reasonably incurred in respect of meals and accommodation.

- (c) The employer will notify the employees and the Union of the designated assembly point and point of embarkation for each job.

14.5 Loss of personal effects

An employee will be reimbursed up to 159.81% of the standard rate for the loss of personal effects normally required while offshore, which are lost due to fire, explosion, collision, foundering or collapse of a fixed platform, vessel or work barge or whilst the employee is travelling in transport provided by the employer. Provided that no payment will be made where the employee's loss is made good by any insurance policy or other claim on the employer or any third party.

14.6 Higher duties

Where an employee performs the duties of a higher paid classification for two or more hours in any one day, then that employee will be paid at the higher rate for that day.

15 Payment of Wages

15.1 The employer will pay the employees wages, penalties and allowances at a frequency of not longer than monthly by electronic funds transfer into the employee's bank (or other recognised financial institution) nominated by the employee.

15.2 An employer may deduct from any amount required to be paid to an employee under this clause the amount of any overpayment of wages or allowances.

16 Stand Down

16.1 An employer may deduct payment for any day of part of a day an employee cannot be usefully employed because of any strike or through any breakdown of machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

16.2 Employees who are stood down may elect to take any accrued annual leave for the period of the stand down.

Part 5 - Hours of Work and Related Matters

17 Hours of Work

17.1 Cycle Work

Employees may be engaged to work on a work cycle made up of working and non-working days. The total ordinary hours of work during a work cycle will not exceed 38 hours plus reasonable additional hours in accordance with the NES, multiplied by the total number of working (on-duty period) and non-working (off duty period) days in the cycle divided by 7.

17.2 On-duty period

The on-duty period will commence on the day of arrival at the designated point of embarkation to the worksite.

17.3 Off-duty period

The off-duty period will commence on the day of departure from the worksite.

17.4 Offshore

- (a) It is agreed that the nature of the operations requires flexible daily work arrangements.
- (b) The average daily hours of work will be no greater than twelve hours. However no employee will be required to work beyond eighteen hours. Where an employee works beyond eighteen hours the employee will be stood down for a ten hour rest break.
- (c) Where it is required, the work will be carried out on a 24 hour basis consisting of two 12 hour work periods. Each work period will be inclusive of one meal break which will count as time worked and which will be taken in a manner which will not adversely affect operations.

17.5 Onshore

The ordinary hours of work will not exceed 38 hours per week plus reasonable additional hours in accordance with the NES. Ordinary hours may be worked up to 12 hours on any day Monday to Sunday.

18 Maximum Weekly Hours

18.1 This clause of the award provides specific detail and supplements the NES which deals with maximum weekly hours.

18.2 For the purposes of the NES an employee's weekly hours may be averaged over the work cycle.

19 Overtime and Penalty Rates

19.1 Onshore workers

Except where provided otherwise in this clause, an employee engaged to work onshore will be paid the following additional payments for all work the employer requires him or her to perform in addition to their ordinary hours:

- (a) 50% of the ordinary hourly base rate of pay for the first two hours and 100% of ordinary hourly base rate of pay thereafter, for overtime worked from Monday until Friday;
- (b) 50% of the ordinary hourly base rate of pay first eight hours and 100% of ordinary hourly base rate of pay thereafter, for overtime worked on a Saturday;
- (c) 100% of the ordinary hourly base rate of pay for overtime worked on a Sunday;

- (d) 150% of the ordinary hourly base rate of pay for overtime worked on a public holiday; and
- (e) 50% of the ordinary hourly base rate of pay for the first two hours and 100% of ordinary hourly base rate of pay thereafter, for overtime worked beyond 38 ordinary hours per week.

19.2 Method of calculation

- (a) When computing overtime payments, each day or shift worked will stand alone.
- (b) Any payments under this clause are in substitution of any other loadings or penalty rates.

19.3 Overcycle work offshore

- (a) Where an employee is required to work or remain at the offshore work site beyond their normal roster period, as provided for in clause 17—Hours of work then they will be paid an overcycle daily payment as prescribed in clause 13—Classifications and minimum wage rates for each day or part thereof worked overcycle.
- (b) The provisions of this clause will not apply to any employee assigned to work from a workshop base or other onshore location.

19.4 Weekend work

An employee will be paid the following loadings for ordinary hours worked on a Saturday or Sunday:

- (a) 50% of the ordinary hourly base rate of pay for the first two hours and 100% of ordinary hourly base rate of pay thereafter, for ordinary hours worked on a Saturday; and
- (b) 100% of the ordinary hourly base rate of pay, for hours worked at any time on a Sunday.

19.5 Public holidays

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

19.6 Exception

For the avoidance of doubt, this clause does not apply in respect of additional hours worked where an employee voluntarily swaps shifts with another employee.

20 Rostering

- 20.1 The employer may establish a regularly recurring roster of equal on-duty and off-duty periods for each work site.
- 20.2 Notwithstanding anything elsewhere contained in this clause, an employer may vary or suspend any roster arrangement immediately in the case of an emergency.

21 Breaks

- 21.1 An employee is entitled to an unpaid meal break of not less than 30 minutes for each meal. Employees may be required to curtail their meal breaks where operational requirements of the vessel dictate.
- 21.2 Breaks will be scheduled by the employee in charge based upon operational requirements so as to ensure continuity of operations. The employer will not require an employee to work more than six hours before the first meal is taken or between subsequent meal breaks if any.

Part 6 - Leave and Public Holidays

22 Annual Leave

- 22.1 This clause of the award supplements the provisions of the NES which deal with annual leave. Annual leave does not apply to casual employees.
- 22.2 For the purposes of the provisions of the NES which deal with annual leave, shiftworker means a continuous shiftworker.

22.3 Arrangements for taking leave

- (a) Where an employee works cycle work, a period of paid annual leave includes working and non-working days during the period.
- (b) Where an employee works cycle work, an employer may reasonably require that:
- (i) any period or periods of annual leave taken by the employee must be a multiple of the on-duty period under the employee's work cycle roster; or
 - (ii) the employee take annual leave as provided in the roster cycle.

22.4 Reasonable refusal based on circumstances

For the purposes of the NES, an employer may reasonably refuse a request for annual leave if the employee works cycle work or is a continuous shiftworker, and the annual leave falls during the employee's roster cycle.

22.5 Payment for annual leave

- (a) The amount to be paid to an onshore employee prior to going on leave will be the employee's minimum rate of pay for ordinary hours under clause 13—Classifications and minimum wage rates plus an annual leave loading of 17.5%. Annual leave loading is only applicable to leave accrued for work onshore.
- (b) Where an employee works part of a year onshore and part of a year offshore the employee will be paid annual leave at the offshore or onshore rate in the same proportion as the time worked offshore or onshore bears to a year.

22.6 Taking of annual leave on excessive accrual

An employer may direct an employee to take paid annual leave if the employee has accrued more than eight weeks or, in the case of continuous shiftworkers, 10 weeks

paid annual leave, and the employer and employee are unable to reach agreement on the taking of the leave. An employer must give an employee at least 28 days' notice prior to the date the employee is required to commence the leave.

22.7 Taking of annual leave over an extended period

An employer and employee may agree that the employee can take a period of paid leave over a longer period. Where this occurs, the payment for the leave will be reduced in proportion to the period of extension. For example, it may be agreed that the leave period is doubled and taken on half pay.

22.8 Leave in advance

- (a) An employee may agree with their employer to take annual leave in advance of an entitlement accruing under the NES. Where this occurs, the employee's leave balance will be reduced by an amount equivalent to the leave taken in advance as the employee's entitlement to paid annual leave accrues.
- (b) The employer may deduct from the employee's termination payments, leave taken in advance where the entitlement to that leave has not accrued as at the date of termination.

23 Personal/Carer's Leave and Compassionate Leave

Personal/carers' 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

Employees are entitled to public holidays in accordance with the NES.

25.1 Reasonable refusal based on the circumstances

For the purposes of the NES, an employer may reasonably require an employee to work and an employee may not refuse to work on a public holiday if:

- (a) the employee works cycle work and the public holiday falls during the employee's roster cycle; and
- (b) the employee is compensated for working on the public holiday.

25.2 Substitution of public holidays

An employer and a majority of affected employees or an individual employee may reach agreement in writing to substitute a day or part-day for a day or part-day that would otherwise be a public holiday under terms of the NES.

26 Parental Leave

Parental leave is provided for in the NES.

Appendix Two

CONTENT RATIONALE OF ROV AWARD

The table below sets out the source of each of the terms of the proposed award.

Clause	Source
1 - Title	New - the proposed award title is consistent with the terminology used by the Commission.
2 – Commencement date	Model provision.
3 – Definitions and interpretation	<ol style="list-style-type: none"> 1. Definitions of Act, Commission, employee, employer, enterprise award and NES are from the AIRC template. 2. Definitions of day, designated assembly point, designated point of embarkation, Pilot/Technician Grade I, II and III, and Senior Pilot/Technician is from clause 5 of the Remotely Operated Sub Sea Vehicles Award 1998. 3. Definition of standard rate is new.
4 – Coverage	<ol style="list-style-type: none"> 1. Clause 4.1 is from clause 3 of the Remotely Operated Sub Sea Vehicles Award 1998. 2. Clause 4.2 and 4.3 are model provisions.
5 - Access to the award and the NES	Model provision.
6 – NES and this award	Model provision.
7 – Award flexibility	Model provision.
8 – Consultation	Model provision.

Clause	Source
regarding major workplace change	
9 – Dispute resolution	Model provision.
10 – Types of employment	Clause 10 is new having regard for other modern priority awards.
11 – Termination of employment	NES provisions included in clause.
12 – Redundancy	NES provisions included in this clause.
13 – Minimum wages	<ol style="list-style-type: none"> 1. Clause 13.1, 13.2 and 13.3 are from clause 9 of the Remotely Operated Sub Sea Vehicles Award 1998. 2. Clause 13.4 is new having regard for other modern priority awards which extends clause 7 of the Remotely Operated Sub Sea Vehicles Award 1998.
14 – Allowances	<ol style="list-style-type: none"> 1. Clause 14.1 Living away from home allowance is from clause 13.1 of the Remotely Operated Sub Sea Vehicles Award 1998. 2. Clause 14.2 Protective clothing and equipment is from clause 13.2. 3. Clause 14.3 Accident pay is from clause 13.3. 4. Clause 14.4 Transportation and accommodation (offshore employees) is from clause 13.4. 5. Clause 14.5 Loss of personal effects is from clause 13.5. 6. Clause 14.6 Higher duties is from clause 9.5.
15 – Payment of wages	<ol style="list-style-type: none"> 1. Clause 15.1 is a modified version of clause 9.4 of the Remotely Operated Sub Sea Vehicles Award 1998. 2. Clause 15.2 is new.
16 – Stand Down	This clause is a more succinct version of clause 16 of the Remotely Operated Sub Sea Vehicles Award 1998.
17 – Hours of work	<ol style="list-style-type: none"> 1. Clause 17.1 is from clause 8 of the Remotely Operated Sub Sea Vehicles Award 1998.

Clause	Source
18 – Maximum weekly hours	This clause is new and supplements the NES.
19 – Overtime and Penalty Rates	<ol style="list-style-type: none"> 1. Clause 19.1, 19.2 and 19.3 are from clause 14.1 and 14.2 of the Remotely Operated Sub Sea Vehicles Award 1998. 2. Clause 19.4 and 19.5 are from clause 12 and clause 14.1.1(c) and (d).
20 – Rostering	This clause is from clause 8 of the Remotely Operated Sub Sea Vehicles Award 1998.
21 – Breaks	This clause is new.
22 – Annual Leave	This clause supplements the NES and is from clause 10 of the Remotely Operated Sub Sea Vehicles Award 1998.
23– Personal/carer’s leave and compassionate leave	This clause refers to the NES.
24 – Community service leave	This clause refers to the NES.
25 – Public holidays	Clause 23.1 and 23.2 supplements the NES and is new specific to the needs of the industry.