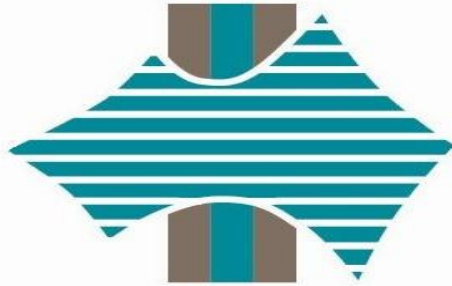


McCARTHY AUSGROUP



For

DREDGING INDUSTRY INDUSTRIAL SECRETARIAT

National Employment Standards

Exposure Draft Submission

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The Honourable Julia Gillard
Minister for Employment and Workplace Relations
Parliament House
Canberra

2 April 2008

BY EMAIL: NES_comment@deewr.gov.au

Dear Minister,

**DREDGING INDUSTRY INDUSTRIAL SECRETARIAT (DIIS) SUBMISSION
RE: NATIONAL EMPLOYMENT STANDARDS (NES) EXPOSURE DRAFT**

The **Dredging Industry Industrial Secretariat (DIIS)** has today become aware through the media of the fact that the Federal Government has invited Australian industry generally to comment on the Federal Government's Draft proposed "**National Employment Standards (NES)**" by Friday, 4 April 2008.

The DIIS notes that in its Discussion Paper on its Exposure Draft NES, the Federal Government:-

- *Indicates that the Exposure Draft's purposes include seek(ing) comments and submissions about the operation of the NES; and that*
- *The Government is particularly interested in hearing about the interaction of the NES with diverse or atypical working arrangements¹*

Given the hours of work arrangements that, by practical necessity, operate in the dredging industry, the DIIS now writes to the Minister to express the dredging industry's concerns with the NES, and in particular, it's proposed Standard Hours provisions.

As we understand it, the NES includes the following "hours of work" features:-

1. Provisions that prescribe that all employees are to be guaranteed maximum working hours of 38 each week plus additional reasonable hours;

To be read in conjunction with provisions that prescribe that

2. The above maximum working hours each week will **not** be able to be worked under an "averaging system" over an extended period, such as is allowed for at present under the Workplace Relations Act 1996. That is, employees will in future be expected to work a maximum of 38 ordinary hours each week and will be prohibited from working an "average" of 38 ordinary hour per week over an extended period of 1, 2, 3 or 12 months.

A statutory requirement for the strict adherence to the above "hours of work" routine under the Federal Government's NES would have severally damaging consequences for the dredging industry for the reasons set out below.

¹ (see points 11. & 12. – page 2 – Federal Govt NES Exposure Draft Discussion Paper)

The Situation in the Dredging Industry

The proposed National Employment Standards (NES) will impact on the employment arrangements of all persons engaged in the dredging industry throughout Australia.

The majority of persons employed in the dredging industry work either:-

- in remote locations; or
- in circumstances where, even if the dredging project itself is not being undertaken
- in a remote location, the employed crew travel and live away from home in order to take up the work.

Dredges generally operate on a continuous or semi-continuous basis and, while a project is being undertaken, are expected to work on most if not every day of the year.

The most common shift arrangements in the dredging industry is a **12 hour shift** arrangement and involves employees working regularly rostered overtime in addition to their average 38 hour week.

In the dredging industry (like the maritime sector generally) employees commonly work an extended shift roster pattern of either:-

- **Five (5) weeks on / five (5) weeks off; or**
- **Six (6) weeks on / six (6) weeks off.**

During the 5 / 6 weeks on period employees would typically work an average of either:-

- 156 hours / 4 week period (an average of 39 hours / week); or
- 168 hours / 4 week period (an average of 42 hours / week).

Periodically, the 5 / 6 weeks on period may be temporarily reduced to a lesser period of 5 weeks or 4 weeks because of the effect of such unpredictable variables as tides etc. before returning to the usual 5 / 6 week on 5 / 6 week off arrangement.

On a typical five (5) / six (6) weeks on / five (5) six (6) weeks off roster routine over 12 months, employees accrue one days paid leave for each day worked and as a result are on average enjoying **6 months (26 weeks) paid leave each year**.

The above outlined working hours arrangements would not be capable of fitting in with the Government's proposed NES hours standards.

The necessary working hour arrangements of the dredging industry would not be capable of cost effectively fitting into the more typical hours arrangements of an average 7.6 hour day / 38 hour week worked generally by the Australian workforce, which would appear to be the standard approach underpinning the "hours provisions" of the proposed NES.

The dredging industry requires the legislated minimum hours standards to provide sufficient flexibility so as to allow the dredging industry to be able to continue to accommodate its existing flexible working hours arrangements.

The dredging industry has concerns with the content of the draft NES and the absence of access to hours flexibility.

Dredging Industry concerns with the NES – Other than Hours

As mentioned at the introduction of this Submission, the DIIS has only today become aware of the Government's calling for industry submissions on the Draft NES. Consequently, the DIIS has not had time to prepare any detailed submission in relation to the DIIS's concerns in relation to the Standard Hours issue. Further, we have not able to detail in any way our concerns about several other aspects of the NES, however in saying that we would want to at least identify those other areas of concern, as being:-

- Provisions for the accrual, taking and rate of payment of accrued leave entitlements – such as Annual Leave, Personal Leave and Long Service Leave (when a Federal LSL Standard is developed)
- The content of the standards in respect of:
 - Recognition of existing levels of flexibility;
 - The interaction of the public holiday standard with the industry's roster systems, including the ability to require work on public holidays where such work forms part of an agreed roster;
 - The recognition of public holidays compensation contained in a salary for the purposes of determining if the requirement to work on a public holiday is unreasonable;
- The recognition of the ability to average wages over a period of up to a year, particularly where annualised salaries are in place.

Given our short time frame, the DIIS would adopt the intent of relevant Submission's made by the Australian Mines & Metals Association (AMMA) to the Government on the above issues in its Submission of 31 March 2008.

The need to protect the minimum entitlements of employees should be balanced against the need for flexibility, particularly where that flexibility has been available for a long period and has been utilised without disadvantaging employees. Such is the case in the dredging industry sector where significant wage levels are being paid to those employees who work in our sector.

The National Employment Standards must be flexible enough to allow the resource sector to build on our success.

About the DIIS & the Dredging Industry

The Dredging Industry Industrial Secretariat (the DIIS) is a National Secretariat representing the employer interests of the dredging industry throughout Australia.

The role of the DIIS is to act as a national employer association representing the employee relations and human resources management interests of Australia's dredging industry.

The DIIS recognises that there are only a very small number of dredging businesses operating in Australia, all of which are foreign owned. Nonetheless, the DIIS believes that the effective operation of the Australian dredging industry is vital to the Nation's wealth and future. The infrastructure projects which the dredging members of the DIIS perform directly supports the creation and maintenance of a range of important industry categories throughout Australia, including:

- Maritime industry - including shipping cargo – both export and import
- Exploration and export of all natural resources, primary produce and manufactured goods;
- Infrastructure projects such a bridges, wharves, airport runways, container terminals, shipping channels, off shore platforms etc.

In Conclusion

The Dredging Industry Industrial Secretariat would ask the Federal Government to take account of these brief but important submissions on it's Draft NES.

The DIIS would be pleased for the opportunity to expand on its Submissions for the Government and / or to meet with the Government to explain its case further or to assist the Government in achieving a workable final NES that would support the effective operations of the dredging industry.

Yours faithfully,



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DIIS Convenor

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