

## **REGISTER OF ENTERPRISE AGREEMENTS**

**ENTERPRISE AGREEMENT NO:** EA06/13

**TITLE:** Amorena (Crew) Enterprise Bargaining Agreement 2004-2007

**I.R.C. NO:** IRC5/6313

**DATE APPROVED/COMMENCEMENT:** 14 December 2005 / 20 July 2004

**TERM:** 36

**NEW AGREEMENT OR  
VARIATION:** Replaces EA02/153.

**GAZETTAL REFERENCE:** 20 January 2006

**DATE TERMINATED:**

**NUMBER OF PAGES:** 20

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** The agreement applies to all employees employed by Trident Shipping Services Pty Ltd (referred to as "Trident" ) located at Refinery Road, Corio VIC 3214 and crew of the bunker barge "Amorena" employed in the classifications set out in this Agreement, who fall within the coverage of the Motor Boats and Small Tugs (State) Award.

**PARTIES:** Trident Shipping Services Pty Ltd -&- The Seamens' Union of Australia, New South Wales Branch

# Amorena (Crew) Enterprise Agreement 2004-2007

Trident Shipping Services

&

Seamens' Union of Australia – NSW Branch

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## 1. TITLE

- 1.1. This Agreement shall be known as the "Amorena (Crew) Enterprise Bargaining Agreement 2004-2007", hereafter referred to as the 'Agreement'.

## 2. ARRANGEMENT

1.	TITLE .....	1
2.	ARRANGEMENT .....	1
3.	DEFINITIONS .....	2
4.	APPLICATION OF AGREEMENT .....	3
5.	PERIOD OF AGREEMENT .....	3
6.	RELATIONSHIP TO PARENT AWARD .....	3
7.	NO EXTRA CLAIMS COMMITMENT .....	3
8.	CONSULTATION .....	3
9.	RIGHTS AND RESPONSIBILITIES OF DELEGATES .....	4
10.	REMUNERATION AND RATE OF PAY .....	5
12.	FLEXIBILITY OF WORK AND MAINTENANCE WORK .....	7
13.	RELIEF ARRANGEMENTS .....	7
14.	DISPUTE RESOLUTION .....	8
15.	ANTI-DISCRIMINATION .....	8
16.	EMPLOYMENT .....	9
17.	TERMINATION OF EMPLOYMENT .....	9
18.	HIGHER FUNCTIONS .....	9
19.	EXPENSES .....	10
20.	COMPENSATION FOR PERSONAL EFFECTS LOSS .....	10
21.	INDUSTRIAL AND PROTECTIVE CLOTHING .....	10
22.	LEAVE .....	11
23.	JURY SERVICE .....	15
24.	HOURS .....	15
25.	OVERTIME .....	16
26.	ACCIDENT MAKE UP PAY .....	16
27.	REDUNDANCY .....	20
28.	SIGNATORIES TO THIS AGREEMENT .....	21

### 3. DEFINITIONS

- i. **Act** means the *Industrial Relations Act (NSW) 1996* or as amended from time to time
- ii. **Bay, harbour or river vessel** means any vessel which is mainly used in water where the *Navigation Act, 1912* of New South Wales or as amended, or any applicable State enactment does not require a ship to be provided with a Master duly certificated for a higher grade than that of a river and bay ship, or a harbour and river vessel, or of a similar ship or vessel.
- iii. **Commission** means the New South Wales Industrial Relations Commission.
- iv. **Crew** means the GPH's employed aboard in the capacity of either motorman or deckhand.
- v. **Double time** means twice the ordinary hourly rate.
- vi. **Employee** means any person who is employed upon any of the work prescribed by this Agreement.
- vii. **Employer** means Trident Shipping Services Pty Ltd.
- viii. **GPH** means General Purpose Hand.
- ix. **Hourly rate** means 1/35th of the sum referred to in Ordinary Rate of this clause.
- x. **Master** means an employee having the command, charge or management of a vessel.
- xi. **Ordinary rate** means the weekly rate prescribed in the respective contained in this Agreement.
- xii. **Self-propelled bunker barge** is a vessel propelled by its own power and normally used in the carriage of bulk liquid cargoes for the purpose of bunkering.
- xiii. **Union** means the *Seamens' Union of Australian – NSW Branch*.
- xiv. **Treble time** means three times the ordinary hourly rate.
- xv. **Time and a half** means 1.5 times the ordinary hourly rate.

#### **4. APPLICATION OF AGREEMENT**

- 4.1. This Agreement shall apply to and be binding upon:
- i. Trident Shipping Services Pty Ltd [ABN 98 089 064 193] (referred to as "Trident").
  - ii. Crew of the bunker barge "Amorena" employed in the classifications set out in this Agreement ("the employees").
  - iii. The Union.

#### **5. PERIOD OF AGREEMENT**

- 5.1. This Agreement shall operate from the beginning of the first pay period to commence on or after Tuesday, July 20, 2004 and shall remain in force until Thursday, July 19, 2007. Negotiations, which may lead to a new Agreement shall commence no later than Thursday, April 19, 2007.

#### **6. RELATIONSHIP TO PARENT AWARD**

- 6.1. This Agreement is to be read and interpreted wholly in conjunction with the *Motor Boats and Small Tugs (State) Award*.
- 6.2. Where there is an inconsistency between the Agreement and the Award, this Agreement shall prevail.
- 6.3. Where this Agreement is silent on an issue, the Award shall prevail.

#### **7. NO EXTRA CLAIMS COMMITMENT**

- 7.1. The parties agree that during the life of this Agreement there shall be no extra claims in relation to wages or conditions covered by the Enterprise Agreement and that any increases to wages and conditions made by variation of the awards set out in clause 5 during the life of this Agreement shall not be passed on.

#### **8. CONSULTATION**

- 8.1. General - Consultative arrangements have been introduced, consisting of:
- i. Representative of employees aboard the vessel
  - ii. Representative of Management
- 8.2. Representatives of relevant unions will also be involved as circumstances require.
- 8.3. The standing orders relating to the consultative framework have been agreed locally and provide for regular meetings to occur with minutes of those meetings to be available to all employees aboard the vessel.

8.4. Should a dispute arise from this process it shall be resolved in accordance with the dispute resolution procedures as set out in clause 14.

## 9. RIGHTS AND RESPONSIBILITIES OF DELEGATES

9.1. The parties to this Agreement believe that good workplace relations are essential for the well being of employees and as a pre-requisite for a safe and productive enterprise.

9.2. Part of this includes acknowledgement of the role of workplace delegates and in enhancing efficiency the following principles are agreed subject always to the operational requirements of the vessel:

- i. The delegate, nominated by the union and recognised by Trident and its representatives, shall receive fair treatment and shall be permitted to perform their role without discrimination in their employment.
- ii. The delegate may consult with workplace staff and management and will be given reasonable access around the workplace to facilitate this.
- iii. The delegate shall be given reasonable opportunities to participate in approved forums with the company and shall be paid for the time involved.
- iv. The delegate may undertake relevant training as agreed between the union and Trident.
- v. The delegate has the right to reasonable access to workplace facilities provided that this does not interfere with the normal operations of the vessel or with other staff.
- vi. The delegate may place necessary union information on noticeboards.
- vii. Following discussions between the union and Trident, the delegate may take reasonable leave without pay to work with the Union at an agreed time.

9.3. It is acknowledged by the parties that in carrying out their role workplace delegates also have a number of responsibilities. These include:

- i. Acting in a courteous and professional manner in their role.
- ii. The responsibility to raise workplace issues in a timely fashion and work cooperatively with the Company to resolve issues.
- iii. Workplace delegates must deal in a professional manner with all employees, regardless of union membership status.

## 10. REMUNERATION AND RATE OF PAY

10.1. Increases to the rates of pay will be on the basis of a 3.5% increase to apply to all classifications from the beginning of the first pay period to commence on or after 19 July 2004. A further 3.5% increase will apply from the beginning of the first pay period to commence on or after 19 July 2005. A further 3.5% increase will apply from the beginning of the first pay period to commence on and after 19 July 2006.

10.2. The ordinary weekly rate shall be as follows:

10.3. General Purpose Hand (Motorman)

Date	Weekly rate	Hourly rate
19/7/04	\$717.98 pw	\$20.51 ph
19/7/05	\$743.11 pw	\$21.23 ph
19/7/06	\$769.12 pw	\$21.97 ph

10.4. General Purpose Hand (Deckhands)

Date	Weekly rate	Hourly rate
19/7/04	\$699.25 pw	\$19.98 ph
19/7/05	\$723.72 pw	\$20.68 ph
19/7/06	\$749.05 pw	\$21.40 ph

10.5. Wages shall be paid fortnightly by electronic funds transfer.

## 11. ALLOWANCES

11.1. Site Allowance

11.1.1. The allowances currently paid for "Site" and "Botany Bay" shall continue to be paid.

11.1.2. The above allowances will not be taken into account for the purposes of overtime or other award prescription.

11.2. Dirty, offensive or discomforting work

11.2.1. Where an employee is called upon to perform work, the dirtiness or offensiveness of which or the discomfort of which is something in excess of that which they are normally required to meet, he shall be paid at the rate of 31 cents per hour for the time so occupied.

### 11.3. Travel allowance

- 11.3.1. Where an employee commences or finishes work between the hours of 11.00 p.m. to 6.00 a.m., the employer shall:
- i. supply them with a conveyance to and/or from their home, whichever is appropriate; or
  - ii. pay them for the time spent in reaching their home and/or travelling therefrom at the prevailing rate, with a minimum of half an hour and a maximum of one hour; or
  - iii. if, by arrangement with their employer, the employee uses their own motor vehicle, they shall receive an allowance of 53 cents per kilometre.

### 11.4. Telephone

- 11.4.1. Where an employee is required by the employer to have a telephone installed at his/her home the employee shall be paid an allowance equivalent to the telephone rental and for all calls made in connection with the employer's business. An employee who has a mobile telephone is entitled to claim the equivalent of a land line rental and telephone calls at the land line rate.

### 11.5. Meal break and allowance

- 11.5.1. Meal intervals of not less than 30 minutes shall be allowed between 12.00 noon 1230 p.m. or within five hours of commencing duty. Provided that where an employee commences work before 7.00 a.m. and is not able to take such meal interval they shall be allowed a crib break of twenty minutes to be counted as time worked.
- 11.5.2. Working during meal intervals will be avoided as far as possible. Where an employee is required to work during his meal he shall be paid one half hour at the rate of double time.
- 11.5.3. An employee required to work overtime as a consecutive extension of normal duty on any day Monday to Friday and such overtime commences more than one and a half hours prior to the usual time of commencing work or terminates more than one and a half hours after the usual time for ending work, shall be paid a meal allowance of \$7.60.
- 11.5.4. An employee required to work on a public holiday or a rostered day off shall be entitled to a meal allowance of \$7.60 in circumstances where the continuous overtime worked exceeds the employee's ordinary daily hours of work by more than one and a half hours.
- 11.5.5. If an employee is required to remain on duty for more than four hours after qualifying for a meal allowance pursuant to subclause 5.6.3 or 5.6.4 hereof, they shall in respect of each further four hours be paid a further meal allowance of \$7.60.

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11.5.6 An employee required to work overtime on a Saturday or a Sunday shall be paid a meal allowance of \$7.60 each four hours of continuous work where such work continues past each four hourly period.

11.6. Adjustment of Allowances

11.6.1. The reimbursement of allowances as contained in this agreement shall be adjusted according to movements in the consumer price index with effect from the first pay period to commence on or after the ratification of this agreement.

11.6.2. A further adjustment to allowances will be made in accordance with the consumer price index movements by administrative action twelve (12) months after the ratification of this Agreement.

**12. FLEXIBILITY OF WORK AND MAINTENANCE WORK**

12.1. Employees covered by this Agreement will carry out duties which are reasonably within the limits of the employee's skill, competence and training. Where such duties involve the use of tools and equipment the employee shall perform those duties provided proper training in the use of such tools and equipment has been given.

12.2. Work, including the use of tools and equipment, in accordance with clause shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

12.3. Officers and crew will actively participate in a program of planned maintenance aboard the vessel to ISM standards.

12.4. Company management will determine a maintenance program and will determine priorities of work within that program. The results will be regularly reviewed by management. As necessary, company management will arrange for training and technical advice (eg. in the use and application of paints) to be provided.

**13. RELIEF ARRANGEMENTS**

13.1. Operational manning levels shall not alter as a result of this Agreement.

13.2. On any normal business day, the vessel is not operational there shall be no less than two people aboard, one of whom shall be an Officer.

13.3. Crew members will maintain their flexible approach to taking RDO's (which may not necessarily occur on a Monday) to meet the operational needs of the vessel.

13.4. Where a member of the crew proceeds on annual leave a relief shall be engaged on a standby basis.

13.5. The relief employee is engaged shall be paid the equivalent of two hours pay for each day he/she stands by.

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- 13.6. Where the relief employee is called upon to work on the vessel on any day or days payment shall be at the appropriate rate set out in this Agreement and conditions as set out in the Award shall apply. The stand by payment referred to in 13.5 shall not apply on such day or days.

#### 14. DISPUTE RESOLUTION

- 14.1. The following dispute settlement procedures will apply to any disputes arising between the parties to this Agreement:

- i. Where a dispute arises at the workplace the matter will be settled where possible between the employees concerned or their Union delegate and their immediate supervisor.
- ii. Where the matter remains unresolved it shall be referred to the appropriate Manager(s) of Trident and the relevant Union(s) who shall discuss the matter and endeavour to settle it. Sensible time limits shall be allowed so that discussions may take place.
- iii. If the matter remains unresolved either party may refer the matter to the New South Wales Industrial Relations Commission and, subject to the provisions of the Act, the Commission may determine the matter.
- iv. All parties agree that work shall continue pending determination of any matter of dispute in accordance with the above procedures.

- 14.2. The right is reserved to the parties to vary this procedure where a significant safety factor is involved.

#### 15. ANTI-DISCRIMINATION

- 15.1. It is the intention of the parties bound by this Agreement to seek to achieve the object in section 3(f) of the Act to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

- 15.2. It follows that in fulfilling their obligations under the disputes procedure prescribed by this Agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Agreement which, by its terms or operation, has a direct or indirect discriminatory effect.

- 15.3. Under the Anti-Discrimination Act (NSW) 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

- 15.4. Nothing in this clause is to be taken to affect:

- i. Any conduct or act which is specifically exempted from anti-discrimination legislation;
- ii. Offering or providing junior rates of pay to persons under 21 years of age;
- iii. Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the Anti-Discrimination Act, 1977; or
- iv. A party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

15.5. This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

## 16. EMPLOYMENT

### 16.1. Permanent full-time employment

16.1.1. Employment shall be by the week.

### 16.2. Causal employment

16.2.1. Employment shall be by the day.

## 17. TERMINATION OF EMPLOYMENT

17.1. Termination of Permanent Full-time Employees shall only be by a week's notice from either the employer or the employee unless the amount of a week's wages be paid or allowed in lieu of such notice.

17.2. This shall not affect the right of the employer to dismiss an employee without notice for neglect of duty or serious misconduct and in such cases the wages shall be paid to the time of dismissal only and the employer shall not be obliged to convey the employee to the place of engagement.

## 18. HIGHER FUNCTIONS

18.1. An employee engaged for two hours or more on any one day or shift on duties carrying a higher rate than that ordinarily applicable to that employee shall be paid at the higher rate for the whole of such day or shift. If engaged for not more than two hours on any day or shift they shall be paid for the time worked at the higher rate.

18.2. Where in any overtime period an employee is engaged on duties carrying a higher rate than that applicable ordinarily to them for more than two hours, the employee shall be paid the higher of such rates for the whole of that overtime period. If engaged for not more than two hours in any overtime period the employee shall be paid for the time worked at the higher rate.

## 19. EXPENSES

- 19.1. The employer shall reimburse an employee any expenses reasonably incurred by them in the service or interest of the employer.
- 19.2. As well as to the other matters, this clause shall apply to inquiries as to casualties or as to the conduct of employees and to proceedings for any alleged breach of any maritime or port or other regulations, unless the Authority conducting the inquiry or proceedings find that such inquiry or proceedings have been occasioned by the wilful default or serious misconduct of the employee, or in the event of an appeal therefrom, the appellate Tribunal finds that such inquiry or proceedings have been occasioned by the wilful default or serious misconduct of the employee.
- 19.3. If any employer objects that any expenses claimed are not reasonable under this clause it may be referred to the Commission for determination. An employee may also refer to the Commission an employer's refusal to reimburse expenses claimed under this clause.

## 20. COMPENSATION FOR PERSONAL EFFECTS LOSS

- 20.1. If in the course of employment an employee should sustain damage to or loss of their personal effects by fire, explosion, foundering, shipwreck, collision, stranding or accident and where such damage was not caused by the employee's own wilful neglect or fault or where such articles are lost through breaking or entering whilst securely stored at the employer's direction in a room or building on the employer's premises, vessel or work shop, the employer shall compensate the employee to the extent of the damage or loss to a maximum of \$1067.

## 21. INDUSTRIAL AND PROTECTIVE CLOTHING [check current issue practice]

- 21.1. The parties agree the following provision of industrial clothing to full time employees on an annual basis:
- i. Shirts (4 per annum)
  - ii. Trousers (4 per annum)
  - iii. Jacket (1 every 2 years)
  - iv. Jumper (1 every 2 years)
  - v. Socks (4 per annum)
  - vi. Workboots (1 per annum)
  - vii. Overalls (3 per annum)
- 21.2. One nominated regular casual employee shall be issued with the same industrial clothing on once only basis.

- 21.3. The provision of external laundry services shall close upon the installation onboard the vessel, or as otherwise agreed, of suitable washing and drying units to be used by employees.
- 21.4. Where an employee is required to wear wet weather gear and/or protective clothing including sunglasses (of an appropriate standard suitable for maritime use and where the circumstances of the work reasonably require it) the employer will reimburse the employee or pay the employee an allowance equivalent to the cost of purchasing the clothing. This subclause will not apply if the employer supplies these items free of cost to the employee.

## 22. LEAVE

### 22.1. Annual Leave

- 22.1.1. Every employee shall at the end of each year of service with an employer become entitled to an annual holiday of four weeks on ordinary pay weeks. Any public holiday occurring during the period of leave shall be added to the said period of four weeks. Such leave shall be given by the employer and shall be taken by the employee within a period of six months from its becoming due.
- 22.1.2. The employer shall pay the employee in advance before the commencement of the employee's leave and shall give the employee not less than one month's notice of the commencement of their leave.
- 22.1.3. Where the service has been terminated before the expiration of one year, the employer shall pay to the employee 4/48ths of the ordinary pay earned by them during the period of their employment, the employment being employment in respect of which leave has not been granted in accordance with this clause.
- 22.1.4. For the purpose of this clause an employee shall be deemed to have served continuously for the aggregate of their employment and such service shall be deemed not to have been interrupted by transfer to some other work of their employer or by a transfer of employment for the convenience of their employer or by any period of leave of absence on account of sickness up to an aggregate of fourteen days in any one year in respect of which the employee is entitled to sick leave under the provisions of this award.
- 22.1.5. A year of employment shall be deemed to have been achieved notwithstanding interruption thereof by change of employment or work or absence not exceeding fourteen days due to sickness in terms of the sick leave provisions of the appropriate Part of this award.
- 22.1.6. Service with an employer prior to the date of coming into operation of this Agreement shall be taken into account for the purpose of calculating the leave due under this clause.

**22.2. Annual leave loading**

22.2.1. In addition to the payment prescribed in clause 12.1 of this Agreement, an employee shall receive during a period of annual leave a loading of 22-1/2 per cent calculated on the rates prescribed in clause 4 – Rates of pay of this Agreement.

22.2.2. The loading prescribed above shall not apply to proportionate leave on lawful termination of employment.

**22.3. Public holidays**

22.3.1. An employee shall be entitled to public holidays as follows:

- i. New Year's Day
- ii. Australia Day
- iii. Good Friday
- iv. Labour Day
- v. Easter Monday
- vi. Anzac Day
- vii. Queen's Birthday
- viii. Christmas Day
- ix. Boxing Day
- x. Bank Holiday
- xi. Or, such other days as are generally observed in the locality and shall be paid for at ordinary rates if not worked.

22.3.2. Where an employee is absent from their employment on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer, the employee shall not be entitled to payment for such holiday.

**22.4. Compassionate leave**

22.4.1. An employee shall be entitled to a maximum of three days' compassionate leave without deduction of pay:

- i. on the death within Australia of the employee's spouse, mother, father, parents-in-law, brother, sister, child or stepchild, grandparents and grandchildren;

- ii. on an occasion when an employee travels overseas in connection with the death outside Australia of one of the relatives specified in paragraph 12.3.1.1 hereof.

22.4.2. Provided that:

- i. they give notice of intention to take such leave as soon as reasonably practicable after the death of such relative;
- ii. they produce satisfactory evidence or proof of death of such relative;
- iii. the entitlement will not apply during any period of leave.

22.5. Carer's leave

22.5.1. An employee other than a casual is entitled to use up to 40 hours personal leave each year to care for members of his or her immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carer's leave where another person has taken leave to care for the same person.

22.5.2. The entitlement to carer's leave is subject to the person in respect of whom the leave is to be taken being either:

- i. a member of the employee's immediate family: or
- ii. a member of the employee's household.

22.5.3. The term immediate family includes a:

- i. spouse (including a former spouse, a de facto spouse and former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- ii. child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

22.6. Sickness on annual or long service leave

22.6.1. If an employee takes ill or is injured whilst on annual or long service leave, the number of days of incapacity shall be recredited, provided that:

- i. the incapacity is promptly reported to their employer;
- ii. the period of incapacity or illness occurs within Australia and is a minimum of one week;

- iii. the employee submits a medical certificate to the effect that due to the nature of their incapacity or illness the employee is unable to perform their normal duties;
  - iv. the employee does not resign or elect to retire without resuming duty.
- 22.6.2. The annual leave (working days) so reaccredited is to be cleared subsequently at a time convenient to the employer, and the amount of award loading paid by the employer in respect of such reaccredited annual leave is not to be refunded by the employee. Care is to be taken to ensure that when the leave so reaccredited is cleared, the loading is not paid again;
- 22.6.3. The long service leave (calendar days) so reaccredited is to be cleared subsequently at a time convenient to the employer, unless the employee concerned elects to allow such leave to remain to the employees credit until the employee ultimately leaves the service;
- 22.7. Sick leave
- 22.7.1. An employee, after three months' continuous service immediately preceding a day on which the employee absents themselves from work because of sickness or accident other than sickness or accident caused through their misconduct who, within 48 hours after the commencement of their absence produces to their employer satisfactory evidence of his inability to attend for work owing to such sickness or accident, by medical certificate or otherwise shall be entitled to leave of absence without loss of pay for a period or periods not exceeding in the aggregate ten days in each year of service. Provided, however, that an employee shall not be entitled to sick leave for any period or periods during which they are entitled to workers' compensation payment.
- 22.7.2. The rights under this clause shall accumulate from year to year so long as employment continues so that any Part of ten days which has not been allowed in any year may be claimed by the employee and shall be allowed by the employer subject to the conditions prescribed by this clause in a subsequent year of such continued employment. Provided that sick leave which accumulates pursuant to this subclause shall be available to the employee for a period of ten years but no longer from the end of the year in which it accrues.
- 22.7.3. An employee shall as soon as practicable and, in any case, within 24 hours of the commencement of his absence, inform their employer of their inability to attend for duty and, so far as possible, they shall state the nature of his illness or incapacity and the estimated duration of their absence.
- 22.7.4. Service before the date of coming into force of this clause shall be service for the purpose of qualifying hereunder.

## 23. JURY SERVICE

- 23.1. An employee on weekly hiring required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of wage they would have received in respect of the ordinary time they would have worked had they not been on jury service.
- 23.2. The employee shall notify their employer as soon as possible of the date upon which they are required to attend for jury service. The employee shall give their employer proof of their attendance, the duration of such attendance, and the amount received in respect of such jury service.

## 24. HOURS

- 24.1. The ordinary hours shall be worked between the hours of 7.13 a.m. and 3.30 p.m. on Monday to Friday inclusive.
- 24.2. The ordinary hours of work shall be 70 hours per two-week period of nine days each of seven hours 47 minutes.
- 24.3. Avoidance of physical exhaustion
- 24.3.1. An employee who has been on duty continuously, including meal breaks, for more than eighteen hours shall not be required by their employer to continue duty until they have had, for the purpose of rest, a period of ten hours off duty.
- 24.3.2. For the purpose of this clause, continuity of an employee's duty shall not be regarded as broken either by meal breaks taken by them or by any other period they are allowed off duty, unless the duration of such period is of six hours or more. Except on a Saturday, Sunday or public holiday in computing a break of duty in relation to this subclause, time off duty before the ordinary finishing time shall not count.
- 24.3.3. Should an employee work at the request of the employer after they have been on duty continuously including meal breaks for more than eighteen hours, they shall be entitled to be paid at the rate of double time for the period of such duty in addition to any other payment due to them until such time as the ten hours respite from duty commences.
- 24.3.4. Employees shall receive their full weekly rate notwithstanding any rest period occurring in ordinary work hours.
- 24.4. Fatigue Management
- 24.4.1. During the life of the Agreement, the Parties commit to review the management of fatigue of the crew. The review shall include factors such as loading schedules, marketing commitments, reasonable working hours and break between work on consecutive days.



26.3. Partial Incapacity

26.3.1. In the case of an employee who is or deemed to be partially incapacitated within the meaning of the Act and arising from an injury covered by this clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under section 9 of the Act for the period in question together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business and the total 40 hour weekly award rate for a day worker which would have been payable under the relevant award for the employee's normal classification of work for the week in question if they had been performing their normal duties.

26.3.2. The total 40 hour weekly award rate above-mentioned shall be the same as that applying for a total incapacity provided that where an employee receives a weekly payment under this section and subsequently such payment is reduced pursuant to section 9 (1) of the Act, such reduction will not increase the amount of accident pay in respect of that injury.

26.4. Payment for Part of a week

26.4.1. Where an employee receives accident pay and such pay is payable for incapacity for Part of a week the amount shall be a direct pro rata.

26.5. Injury

26.5.1. For the purposes of this clause injury shall be given the same meaning and application as applying under the Act and no injury shall result in the application of accident pay unless an entitlement exists under the Act.

26.6. Workers' Compensation Act

26.6.1. Means the *Workers' Compensation Act (NSW) 1926* as amended from time to time.

26.7. Qualifications for payment

26.7.1. Always subject to the terms of this clause, an employee covered by this clause shall upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the Act be paid accident pay by their employer who is liable to pay compensation under the Act, which said liability by the employer for accident pay may be discharged by another person on their behalf provided that:

26.7.2. Accident pay shall only be payable to an employee whilst such employee remains in the employment of the employer by whom they were employed at the time of the incapacity and then only for such period as they receive a weekly payment under the Act. Provided that if an employee on partial incapacity cannot obtain suitable employment from their employer but such alternative employment is available with another employer then the relevant amount of accident pay shall still be payable.

26.7.3. Provided further that in the case of the termination by an employer of an employee who is incapacitated and who except for such termination would be entitled to accident pay, accident pay shall continue to apply subject to the provisions of this clause except in those cases where:

- i. the termination is due to serious and/or wilful misconduct on the Part of the employee; or
- ii. arises from a declaration of liquidation of the company in which case the employee's entitlement shall be considered by the parties to this Part.
- iii. In order to qualify for the continuance of accident pay on termination an employee shall if required provide evidence to their employer of the continuing payment of weekly workers' compensation payments.

26.7.4. Accident pay shall not apply in respect of any injury during the first five normal days of incapacity.

26.7.5. An employee on engagement may be required to declare all workers' compensation claims made in the previous five years and in the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit their entitlement to accident pay under this clause.

26.8. Liability of the employer

26.8.1. The employer shall be liable to pay accident pay as defined herein during the incapacity of the employee, within the meaning of the Act, until such incapacity ceases or until the expiration of a period of 39 weeks from the date of injury, whichever event shall first occur.

26.9. Absences on other paid leave

26.9.1. An employee shall not be entitled to payment of accident pay in respect of any period of other paid leave of absence.

26.10. Notice of injury

26.10.1. An employee upon receiving an injury for which he claims to be entitled to receive accident pay shall give notice in writing of the said injury to his employer as soon as reasonably practicable after the occurrence thereof; provided that such notice may be given by a representative of the employee.

26.11. Medical examination

26.11.1. In order to receive entitlement to accident pay an employee shall conform to the requirements of the Act as to medical examination.

26.11.2. Where in accordance with the Act a medical referee gives a certificate as to the condition of the employee and his fitness for work or specified work for which the employee is fit and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident pay shall cease from the date of such refusal or failure to commence the work.

26.12. Redemption of weekly payments

26.12.1. Where there is a redemption of weekly compensation payments under the Act the employer's liability to pay accident pay shall cease as from the date of such redemption.

26.13. Civil damages claims

26.13.1. An employee receiving or who has received accident pay shall advise their employer of any action they may institute or any claim they may make for damages. Further the employee shall, if requested, provided an authority to the employer entitling the employer to a charge upon any money payable pursuant to any judgement or settlement on that injury.

26.13.2. Where an employee obtains a judgement or settlement for damages in respect of an injury for which they have received accident pay the employer's liability to pay accident pay shall cease from the date of such judgement or settlement; provided that if the judgement or settlement for damages is not reduced either in whole or Part by the amount of accident pay made by the employer the employee shall pay to his employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

26.13.3. Where an employee obtains a judgement or settlement for damages against a person other than the employer in respect of an injury for which they have received accident pay the employer's liability to pay accident pay shall cease from the date of such judgement or settlement; provided that if the judgement or settlement for damages is not reduced either in whole or Part by the amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

26.14. Insurance against liability

26.14.1. Nothing in this clause shall require an employer to insure against his liability for accident pay.

26.15. Variations in compensation rates

26.15.1. Any changes in compensation rates under the Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

26.16. Death of employee

26.16.1. All rights to accident pay shall cease on the death of an employee.

**27. REDUNDANCY**

27.1. Should there be a proposal for redundancies, the parties to this Agreement will first meet to discuss the proposed redundancy. The dispute resolution clause may be applied in the application of this clause.

27.2. The following combinations of notice and payments shall apply to an employee who is made redundant by the employer:

- i. One weeks notice will be given.
- ii. Part, or all, of the notice period may be paid out at the discretion of the employer.
- iii. Payments will be based on the current base wage rate with no further payments.
- iv. Payments will be made in accordance with the following table:

0 to 10 years	4 weeks per year
10 to 20 years	3 weeks per year
20 to 30 years	2 weeks per year
31 years and over	1 week per year

**28. SIGNATORIES TO THIS AGREEMENT**

Signed for and on behalf of: Trident Shipping Services Pty Ltd

Signed:

B. Warburton

Name:

B. WARBURTON

Date:

26<sup>TH</sup> SEPTEMBER 2005

Witness:

[Signature]

Signed for and on behalf of: Seamens' Union of Australia – NSW Branch

Signed:

[Signature]

Name:

Robert Loomis

Date:

4. 10. 2005.

Witness:

[Signature]