

**STRONGER  
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**IN THE FAIR WORK COMMISSION**

**AM2017/46 – Ports, Harbours and Enclosed Water Vessels Award 2010**

**Section 160 – Fair Work Act 2009 – Application to vary a modern award to**

**remove ambiguity or uncertainty or correct error**

**SUBMISSIONS OF THE AUSTRALIAN WORKERS' UNION**

**FULL BENCH DRAFT DETERMINATION**

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## BACKGROUND

1. These submissions of The Australian Workers' Union (**AWU**) are made pursuant to the Full Bench Decision on 17 January 2018<sup>1</sup>, which invited parties to comment on a Draft Determination proposed by the Full Bench by 25 January 2018.
2. The AWU submissions are below.

## SUBMISSIONS – GENERAL

3. The AWU notes that the Decision of the Full Bench of the Fair Work Commission on 10 November 2017<sup>2</sup> records the position of the AWU as being that it does not object in principle to the variation application filed by the Australian Southern Bluefin Tuna Industry Association Ltd (**ASBTIAL**), but its position is reserved until further evidence of the actual work performed is filed. It does not appear that any evidence about the type of work performed by employees in the wild catch fishing industry was subsequently filed as part of these proceedings.
4. These proceedings concern an application by ASBTIAL to vary the *Ports, Harbours and Enclosed Water Vessels Award 2010* to correct an error. In order to determine this matter, the Full Bench was not required to make a binding determination regarding whether the *Miscellaneous Award 2010* covers any employee working in the wild catch fishing industry. The AWU considers that such an assessment could only occur with reference to evidence concerning a particular class of employee and the nature of his or her role. The AWU understands that this did not occur in the present matter.
5. The coverage of the *Miscellaneous Award 2010* does not operate with reference to any particular *industry* being included or excluded from its ambit. The test to determine the coverage of the *Miscellaneous Award 2010* was recently identified by a Full Bench of the Fair Work Commission in *United Voice v Gold Coast Kennels Discretionary Trust t/a AAA Pet Resort*<sup>3</sup>.
6. On that basis, The AWU wishes to note for the record that it expressly reserves all rights concerning whether the *Miscellaneous Award 2010* covers any employees working in the wild catch fishing industry.

## SUBMISSIONS – DRAFT DETERMINATION

7. Regarding the Draft Determination to vary the *Ports, Harbours and Enclosed Water Vessels Award 2010*, The AWU submits the following amendments to be considered by the Full Bench.
8. The definition of wild catch fishing industry to be amended as follows:

**“wild catch fishing industry means the commercial operation ~~of~~ by an employer ~~to~~ of wild catching of fish and other seafood that has grown to maturity in its natural**

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<sup>1</sup> [2018] FWCFB 368

<sup>2</sup> [2017] FWCFB 5273

<sup>3</sup> [2018] FWCFB 128 at [37]

*environment. It does not include operations covered by the Aquaculture Industry Award 2010.”*

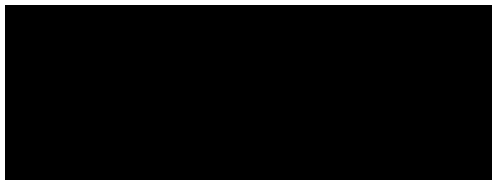
9. The addition of the word "wild" may assist in ensuring disputes don't arise about whether a fish farming site in an ocean, river, or lake could constitute a 'natural environment'.

10. The content of clause 4.7 to be amended as follows:

***“4.7** This award does not cover employees **of employers** in the wild catch fishing industry (as defined in clause 3 of this award).*

11. The above amendment is consistent with the general rule that industry coverage is determined by the industry of the employer.

Yours Sincerely,



Zachary Duncalfe  
**NATIONAL LEGAL OFFICER**  
**The Australian Workers' Union**