

FAIR WORK COMMISSION

Matter No: AM2016/5

S.156 – 4 Yearly Review of Modern Awards

Ports, Harbours and Enclosed Water Vessels Award 2010, Seagoing Industry Award 2010, and the Marine Towage Award 2010.

SUBMISSIONS OF CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION - THE MARITIME UNION OF AUSTRALIA DIVISION

Background

1. These submissions are advanced by the Construction, Forestry, Maritime, Mining and Energy Union – The Maritime Union of Australia Division (**MUA**) in response to the Decision of the Full Bench ([2019] FWCFB 8721) providing interested parties with a final opportunity to file submissions in relation to the draft determinations attached to the Decision.
2. On 29 January 2020 the MUA was given an extension to file its submissions by 5pm on 7 February 2020.
3. The draft determinations seek to vary the coverage clauses of the Ports, Harbours and Enclosed Water Vessels Award 2010 (**Ports Award**), Seagoing Industry Award 2010 (**Seagoing Award**), and the Marine Towage Award 2010 (**Towage Award**) to give effect to the decision of the Full Bench issued 24 February 2017 ([2017] FWCFB 1138).
4. In that Decision Watson VP observed (at [19]):

[19] In my view, it is appropriate that an employer that conducts various types of maritime activities be covered by the award that is relevant to each of those maritime activities. If an employer conducts different types of operations, then different types of operations, then different award safety nets should apply to each of those operations. Reflecting that principle in the coverage clauses of the relevant awards is my view consistent with the modern awards objective. I consider that the variations are necessary to achieve the modern awards objective.
5. Gooley DP and Cambridge C agreed with that observation (at [33]).
6. The draft determinations focus on the interaction of the coverage clauses of the Ports Award, Seagoing Award, and Towage Award as they are the awards that apply to the maritime activities of Sea Swift, the proponent of the proceedings.
7. The principle established by the Full Bench is one that applies equally to employers who conduct maritime activities that are covered by both the Ports Award and the Marine Tourism Award and Charter Vessels Award 2010 (**Marine Tourism Award**).

8. There are several employers that fall in this category. Examples of employers that have recently been (or currently are) involved in contested proceedings before the Commission as to the appropriate award for the purposes of the BOOT referred to in section 193 include:
- (a) Noorton Pty Ltd t/as Manly Fast Ferry (See *CFMMEU v Noorton Pty Ltd t/as Manly Fast Ferry* [2018] FWCFB 7224 – found to be covered by the Ports Award);
 - (b) Vyscot Pty Ltd t/as Captain Cook Cruises (WA) (see *Vyscot Pty Ltd t/as Captain Cook Cruises (WA)* [2020] FWCA 209 – found to be covered by the Marine Tourism Award); and
 - (c) Fantasea Pty Ltd in relation to the application for approval of an enterprise agreement known as the *Fantasea Masters, Coxswain and Deckhands Pty Limited Enterprise Agreement 2019* that is currently before the Commission for determination.

Interaction of the Ports Award and the Marine Tourism Award

9. The Marine Tourism Award is expressed to cover employers throughout Australia in the Marine Tourism and Charter Vessels Industry and their employees in the classifications listed in clause 13 – Minimum wages to the exclusion of any other modern award. (clause 4.1).
10. The draft determination for the Ports Award is expressed to cover employers throughout Australia in respect of their operation in the ports, harbours and enclosed water vessels industry and their employees in the classifications listed in clause 13 to the exclusion of any other modern award. (clause 4.1) The award does not cover employers or employees wholly or substantially covered by a list of awards including the Marine Tourism Award. (clause 4.4)
11. The following consequences arise:
- (a) if the marine activities of the employer and the employee are substantially covered by the Marine Tourism Award with the balance of those activities being covered by the Ports Award then the Marine Tourism Award is the relevant award. This offends the principle determined by the Full Bench.
 - (b) if the marine activities of the employer are substantially covered by the Ports Award with the balance of those activities being covered by the Marine Tourism Award then the Ports Award will only apply to the employer in respect of the employer's operation in the ports, harbours and enclosed water vessels industry. The balance of the activities of the employer are potentially award free. It is unlikely that these activities will be covered under the Marine Tourism Award as a result of clause 4.7 as this clause is predicated on more than one award applying to those activities and this is clearly not the case. The draft determinations should ensure that award coverage is not lost.

Proposed amendment to the coverage of the Marine Tourism Award

12. Consistent with the decision of the Full Bench issued 24 February 2017 ([2017] FWCFB 1138) the MUA proposes the following:

The Marine Tourism Award be varied as follows:

1. Deleting clause 4.1 and inserting the following
 - 4.1 This industry award covers employers throughout Australia in respect of their operations in the Marine Tourism and Charter Vessels Industry and their employees in the classifications listed in clause 13 – Minimum wages to the exclusion of any other modern award.
2. Renumbering clauses 4.2 to 4.7 as clauses 4.3 to 4.8
3. Inserting a new clause 4.2 in the following terms:
 - 4.2 This award does not cover employers in respect of their operations covered by the following awards:
 - (a) the *Dredging Industry Award 2010*;
 - (b) the *Marine Towing Award 2010*;
 - (c) the *Maritime Offshore Oil and Gas Award 2010*;
 - (d) the *Port Authorities Award 2010*;
 - (e) the *Ports, Harbours and Enclosed Water Vessels Award 2010*;
 - (f) the *Seagoing Industry Award 2010*; and
 - (g) the *Stevedoring Industry Award 2010*;

Dated: 7 February 2020



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