



# AUSTRALIAN MARITIME OFFICERS UNION

ABN: 56 181 230 800

Incorporating: Merchant Service Guild of Australia and Australian Stevedoring Supervisors Association

5<sup>th</sup> Floor, Labor Council Building, 377 Sussex Street, Sydney ● Postal Address: PO Box 407, Haymarket NSW 1240  
Telephone:(02) 9264 2388 ● Facsimile:(02) 9267 4766 ●E-Mail: amou@amou.com.au

5 May 2016

Ms Ingrid Fraser  
Associate to Vice President Watson  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

By email: [chambers.watson.vp@fwc.gov.au](mailto:chambers.watson.vp@fwc.gov.au) and [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Associate

**RE: AM2014/241  
Ports, Harbours and Enclosed Water Vessels Award 2010**

**AM2016/5  
Ports, Harbours and Enclosed Water Vessels Award 2010  
Seagoing Industry Award 2010**

**AM2016/5 Application by Sea Swift Pty Ltd to vary the Ports, Harbours and Enclosed Water Vessels Award 2010, Seagoing Industry Award 2010 and Marine Towage Award 2010.**

In relation to the questions posed in the exposure draft (Ports, Harbours and Enclosed Water Vessels Award 2016) we agree with the responses provided by Mr Keats of W G McNally Jones Staff of 14 April 2016.

The Australian Maritime Officers Union (AMOU) is opposed to the Application by Sea Swift Pty Ltd contained in the draft Determination attached to correspondence to the Fair Work Commission dated 12 April 2016. Submissions in this connection will be made in reply.

The AMOU opposes the Application by the AIMPE (dated 2 March 2015) seeking to vary the pay rates for the classification of Engineer, so as to provide a 100% relativity to pay rates for the classification of Master. Submissions in this connection will be made in reply.

In relation to the A.4.1, MIAL submit A.4.1 incorporates the NES Entitlements. The AMOU submits A.4.1 is in addition to the NES entitlements. Submissions in this connection will be made in reply.

Yours faithfully

Australian Maritime Officers' Union

Sea Swift

**W.G. McNALLY JONES STAFF**

LAWYERS



LAW SOCIETY BUILDING  
LEVEL 10 170-172 PHILLIP STREET, SYDNEY, N.S.W. 2000

---

TELEPHONE: 9233 4744    FACSIMILE: 9223 7859    DX: 283    EMAIL: law@mcnally.com.au    WEB: www.mcnally.com.au

6 March 2009

Our Ref:WGMc:NK:TM:811066

The Industrial Registrar  
Australian Industrial Relations Commission  
GPO Box 1994  
MELBOURNE VIC 3000

By email: [amod@air.gov.au](mailto:amod@air.gov.au)

Dear Registrar,

**RE: SEAGOING INDUSTRY AWARD 2010  
AM2008/41**

We are the lawyers for the Maritime Union of Australia and the Australian Institute of Marine and Power Engineers.

We enclose our submissions for the making of a modern award known as the "Seagoing Industry Award 2010".

We will be attending the public consultations on 19 March 2009.

Yours faithfully,

**W.G. McNALLY JONES STAFF**



**BILL McNALLY**

E-mail: [bill@mcnally.com.au](mailto:bill@mcnally.com.au)

---

Entitled to practice in New South Wales, Victoria, Queensland, South Australia, Western Australia, the Australian Capital Territory and any federal court in Australia.

**PRINCIPALS:** W.G. McNALLY, Acc. Spec. (Employment & Industrial Law) • D. T. TRAINOR, Acc. Spec. (Personal Injury.)

R. F. BRENNAN • M. E. JALOUSSIS (B.Comm. LLB).

**CONSULTANTS:** THE HON. LANCE WRIGHT QC • M.R. TURNER.

**SENIOR ASSOCIATES:** N. KEATS • A. McROBERT

**ASSOCIATE:** D. HILL

ABN 71 011 954 118

**AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

*Workplace Relations Act 1996*

**Award Modernisation**

**Maritime Industry**

(AM2008/41)

**SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA**

**AND**

**THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS**

**IN SUPPORT OF THE MAKING OF THE SEAGOING INDUSTRY AWARD 2010**

**Introduction**

1. It is submitted that the Commission should make the Seagoing Industry Award 2010 in accordance with attachment "A" to these submissions ("modern award"). That modern award proscribed conditions that are substantially the same as those in the award which it replaces (the Maritime Industry Seagoing Award 1999 AP788080) ("MISA").

**Coverage**

2. This modern award is expressed to cover employers in the Seagoing Industry and their employees. The industry is defined as "employers engaged in or in connection with vessels trading as cargo or passenger vessels which in the course of such trade proceed to sea (on voyages outside the limits of bays, harbours or rivers)". The coverage of the Modern Award substantially reflects the coverage of MISA.

---

**Filed by:**  
W.G. McNally Jones Staff  
**Address:**  
Level 10, 170 Phillip Street  
SYDNEY NSW 2000

Phone No: 9233 4744  
Fax No: 9223 7859  
**DX: 283 SYDNEY**  
REF: WGM:NK:TM:811066

3. The coverage of the modern award should be read in conjunction with the provisions of Chapter 1 Part 1-3 Division 3 - *Geographical application of this Act* of the *Fair Work Bill 2008*.
4. The Modern Award replaces the following instrument:

| AIRC Industry     | Publication Title                     | Pub ID   | Common Rule | State |
|-------------------|---------------------------------------|----------|-------------|-------|
| Maritime industry | Maritime Industry Seagoing Award 1999 | AP788080 |             |       |

5. We have not included in this Modern Award:
- a. Provisions contained in pre-reform enterprise awards (including NAPSAs).
  - b. Provisions contained in long service leave awards;
  - c. In AM2008/49 we have sought a modern award known as "Port Harbour and Enclosed Waters Vessels Industry Award 2010." The provisions in the following NAPSAs have been incorporated into that award rather than this modern award:
    - i. Maritime Award - Brisbane River and Moreton Bay 2003 -- AN140163
    - ii. North Queensland Boating Operators Employees Award - State 2003 -- AN140190;
    - iii. Ketches & Schooners Award -- AN150068;
    - iv. Shipping Award -- AN170095
  - d. In AM2008/49 we have sought a modern award known as "Tug Industry Award 2010." The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:
    - i. Tug and Barge Industry (Interim) Award 2002 -- AP824200

- e. In AM2008/49 we have sought a modern award known as "Dredging Industry Award 2010." The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:
- i. Dredging Industry (AWU) Award 1998 – AP778702
  - ii. Marine Engineers (Non Propelled) Dredge Award 1998 – AP788027
  - iii. Maritime Industry Dredging Award 1998 – AP787991
6. We have not included the Self-Propelled Barge and Small Ships Industry Award 2001 which is referred to in the Full Bench Statement dated 30 January 2009 for the Maritime Industry. It only applies to Perkins Shipping Group.
7. We have not included the Shipping Industry Loss of Certificate of Competency Award 2003 as its provisions can not be included in a modern award.

#### Terms of the award and their source

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

| Clause                                    | Source   |
|---|--|
| Clause 1 – Title                          | New  |
| Clause 2 – Commencement date              | AIRC template  |
| Clause 3 – Definitions and interpretation | <ol style="list-style-type: none"> <li>1. Definitions of Act, employee, employer, enterprise award and NES are from the AIRC template</li> <li>2. Definitions of Cargo, Day, Home port, month and vessel are from the <i>Maritime Industry Seagoing Award 1999</i> ("MISA")</li> <li>3. Definition of Chief Integrated Rating and Integrated Rating are new.</li> <li>4. The standard rate has been set as the total rate for the</li> </ol> |

|  |   |
|--|---|
|  | integrated rating Dry Cargo Vessels of up to 19 000 tonnes (AOV). This classification was the key classification in MISA.   |
| Clause 4 - coverage of the award           | This is based on clause 4.2 of MISA.  |
| Clause 5 - access to the award and the NES | Model provision.  |
| Clause 6 - NES and this award              | Model provision.  |
| Clause 7 - award flexibility               | Model provision.  |
| Clause 8 - consultation                    | Model provision.  |
| Clause 9 - dispute resolution              | Model provision.  |
| Clause 10 - types of employment            | Clause 10 of MISA   |
| Clause 11 - Employer and employee duties   | Clause 9 of MISA without clause 9.2.3 which is a referencing clause.  |
| Clause 12 - termination of employment      | Clause 11 of MISA without clause 11.3. That clause related to redundancy and is replaced by clause 13.  |
| Clause 13 - redundancy                     | This is a new clause that applies the NES.  |
| Clause 14 - minimum wages                  | <ol style="list-style-type: none"> <li>1. Clauses 14 and 12 of MISA updated to 2008 rates.</li> <li>2. Aggregate wages have been a feature of this industry for decades.</li> </ol> |

|  |   |
|--|---|
| Clause 15 – Superannuation                                 | Model clause  |
| Clause 16 – hours of work                                  | Clause 32 of MISA   |
| Clause 17 –leave   | <ol style="list-style-type: none"> <li>1. Clause 33 of MISA except for clause 17.2 which provides incidental detail in relation to the operation of entitlements under the NES so as to prevent duplication of entitlements.</li> <li>2. Leave arrangements of this form have been a feature of this industry for decades.</li> </ol> |
| Clause 18 – Personal/carer’s leave and compassionate leave | This clause refers to clause 17.2   |
| Clause 19 – Community Service leave                        | Cross references the relevant NES.  |
| Clause 20 – public holidays                                | This clause refers to clause 17.2   |
| Clause 21 – parental leave                                 | Cross references the relevant NES.  |
| Clause 22 – leave for consultation meetings                | Clause 35 of MISA   |
| Clause 23 – allowances                                     | Clauses 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31 of MISA updated to 2008 amounts and then converted into percentages of the standard rate.  |

9. The provisions should not lightly be disturbed.

**Conclusion**

10. We submit that the Seagoing Industry Award 2010 should be made.
11. Bill McNally and Nathan Keats will attend the public consultations on 19 March 2009 to answer questions and make submissions in relation to draft awards proposed by other interested organisations.

Dated: 6 March 2009



.....  
William Grant McNally  
Solicitor for the Maritime Union of Australian and  
The Australian Institute of Marine and Power Engineers



.....  
Nathan Keats



# Sea Swift.

Document converted from TXT version, text and tables may not correctly align for screen display or printing.

Dec 149/90 M Print J1528

## AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988

Conciliation and Arbitration Act 1904 s.25 notification of industrial dispute

Merchant Service Guild of Australia and others

and

Seaswift Pty Limited and others (C No. 40130 of 1988)

Seafarers Maritime industry

COMMISSIONER FOGARTY MELBOURNE, 14 FEBRUARY 1990

Industrial dispute - dispute finding - refrain hearing - union seeking federal award - employer argued that operation of award would reduce competitiveness and that existing State awards sufficed - application of State awards doubtful - federal awards common in this industry - competitiveness argument unconvincing - union attitudes much improved - not in public interest to refrain from award - application under s.111(1)(g) rejected.

### DECISION

This decision determines an application made by a number of companies that, pursuant to s.111(1)(g)(ii) and (iii) of the Act, this Commission should refrain from making an award in relation to work on ships operated by those companies in North Queensland.

### BACKGROUND

In August 1988, the Merchant Service Guild of Australia, The Australian Institute of Marine and Power Engineers and The Seamen's Union of Australia (the unions) served logs of claims on employers in Queensland, Victoria, Tasmania and the Northern Territory. The logs were designed to secure an award of this Commission as to wages and conditions for seafarers sailing in the vessels of those companies.

Disputes arising out of the logs were notified to the Commission by the unions late in August 1988.

A formal finding of the existence of a dispute involving all those companies that were served was made by me. Subsequently, that finding was revoked, by consent of the parties, as to ART Shipping and Trawler Agency. Towards the close of proceedings before me, it was conceded by counsel for the unions that certain difficulties would arise in relation to the making of an award as to Gulf Freight Services and he asked that the matter be stood over in relation to that respondent to the logs. I now grant that application and, consequently, will not deal any further in this decision with the material placed before me as to that company.

In the event, the proceedings before me came down to the s.111(1)(g) arguments and evidence in relation to the following companies:

- Riverside Tug and Barge Company
- Seaswift Pty Ltd
- Bloomfield Barge Company Pty Ltd

## 2 DECISION - MARITIME INDUSTRY

- Tropical Traders Pty Ltd
- Maliric Pty Ltd
- Torres Strait Navigation Ltd
- Brancorp Pty Ltd
- Jardine Shipping

Another respondent to the logs was Mason Shipping, a subsidiary company of John Burke Limited and already respondent to the Self-Propelled Barges and Small Ships Award 1981(1) in the terms of which the logs were drawn. That company was given leave to appear. I shall come to its submissions later in this decision.

The cases presented to me were detailed and extensive in evidence and argument. In short, the proceedings were a thorough-going review of North Queensland shipping and extended over a period of nine months. It would not be overstating the position to say that, on both sides, the major focus of attention was the company, Seaswift Pty Ltd.

## THE ARGUMENTS AND EVIDENCE

As to certain of the respondents to the logs that I have listed above, I believe my decision can be relatively brief and so I propose to deal with those matters first of all.

Riverside Tug and Barge Company

On the evidence before me, this company owns six vessels. Five of them are on demise charter to Brancrest so that Riverside Tug and Barge employs no one on them. The only vessel, for the purposes of these proceedings, that the company operates is the "Sam Wellsby" which is moored at Shute Harbour and is available for casual work with a casually-employed crew.

Riverside Tug and Barge is one of the business names of the Riverside Coal Transport Company, the main operations of which are in South-East Queensland and under awards of the Queensland (State) industrial tribunal.

It was put to me by counsel for the company that I should refrain from bringing the company within a federal award because the crew of the "Sam Wellsby" was only two, that it was not engaged in any regular work and, in any event, the company's operations were all within the State area. On balance, I have decided to grant that application, principally because, on the evidence before me, the work of the one vessel involved is relatively minor, intermittent in character and, for the future, uncertain. For that type of work, I agree with counsel for the company, for the reasons he outlined at pp. 1467/8 of the transcript, that the operations of the State award is preferable.

Bloomfield Barge Company Pty Ltd

This family company is operated by Mr W.E. Simms who gave evidence that he operated the barge "Tasma" of 108.5 gross tonnes. Mr Sims also operates a timber milling business. The barge is used for carrying timber from Bloomfield River to Cairns - some 70 nautical miles. The barge is crewed by a casually- employed skipper, Mr Sims himself as engineer and a deckhand who is usually \_ \_

(1)Print E6876 [S013]; (1981) 258 CAR 635

DECISION - MARITIME INDUSTRY 3

"one of our mill hands that we second for the trip" (transcript p.77). The barge has made other voyages on an ad hoc basis from time to time (p.85) but, apart from its work in relation to Mr Sim's timber operations, engages in no regular trading.

In the scheme of things, the work of the barge is insignificant and I see no reason to involve its operations in a federal award; its work is really an adjunct to the timber milling venture.

Tropical Traders Pty Ltd and Maliric Pty Ltd

These are, or were, companies operated by Mr Brett Devine and, although the evidence before me is not entirely conclusive, it would appear he has gone out of business. In the circumstances, I decide to stand the matter over as to these two companies. If more definite information about their activities can be unearthed, the matter can be relisted.

Torres Strait Navigation Ltd

This company, on the evidence before me, is a subsidiary of Gold Copper Exploration and itself does not appear to employ maritime employees. In any event, the notifiers did not press their case in relation to the company

(see p.961 of the transcript) and, accordingly, I stand the matter over in so far as Torres Strait Navigation Ltd is concerned.

Brancorp Pty Ltd

Whether an award should be made as to this respondent to the logs is tied up with what I have already said, above, as to Gulf Freight Services Pty Ltd. Brancorp was served but I agree with counsel for the company that it has no involvement in the industry as an employer. Counsel for the notifiers conceded that another firm, Brancrest, was really Gulf Freight Services Pty Ltd but Brancrest was not served. I have already decided, above, to stand the matter over as to Gulf Freight Services Pty Ltd. I formally revoke my finding of a dispute in so far as that finding affected Brancorp (the transcript pp. 46-48, 1447/8 and 1602-1604).

I now deal with the cases in relation to Seaswift Pty Ltd and Jardine Shipping.

If any two factors can be said to have set the unions off on the task of securing a federal award they are the entry into competition with John Burke Ltd (or, more to the point, its subsidiary Mason Shipping) of Seaswift Pty Ltd and the purchase by it of a vessel called "Molunat" and an associated barge.

Seaswift Pty Ltd is a company forming part of the Faithfull family's group of companies which are involved in diverse interests in Queensland. For the purposes of this case, however, it is only necessary to refer to its maritime operations. In short, these entail mother-shiping for fishing fleets operating off the North Queensland coast and general trading along that coast, including to the islands off Cape York and to points along the coast of the Gulf of Carpentaria. In this trade, Seaswift Pty Ltd has secured government contracts formerly held by Mason Shipping. Much evidence and argument was presented to me in an effort to show that these contracts had been secured in the face of unsatisfactory service by vessels of Mason Shipping which, it was said, had been due to poor management, inefficient and uncommitted crews and high costs stemming from the operation of the federal award to which Mason Shipping is respondent - the Self-Propelled Barges and Small Ships Award 1981.

#### 4 DECISION - MARITIME INDUSTRY

As to the "Molunat", after much argument and evidence about whether it was or was not intended to be engaged on work other than that of an intrastate character, the matter was put to rest by the evidence of Mr J.W. Faithfull that his company's plans for the vessel had been ill-founded, that the vessel was out of service and was up for sale (p.884 et seq).

When the case was reopened in November 1989, at the request of the applicants in the s.111(1)(g) matter, I was informed by counsel for Seaswift Pty Ltd that certain modifications had been made to "Molunat", that the vessel was being employed by the company on the Queensland coast but that it was still up for sale.

Seaswift Pty Ltd operates, in the trades I have just referred to, the vessels "Kurunda" (a landing barge/bulk fuel carrier), "Heron Bay" (a mother ship), "Emu Bay" (a mother ship) and "Willara" (a mother ship/tug)

in what might be termed a very flexible set of labour arrangements and, in the view of the company, pursuant to two awards of the Queensland industrial tribunal (see evidence-in-chief of Mr J.W. Faithfull at p.302 et seq of the transcript).

The case presented by counsel for the applicants tended to focus, in particular, on Seaswift. But it was intended to apply equally to Jardine Shipping and, indeed, to those companies I have dealt with already in this decision.

As to Jardine Shipping, it should be noted that that company operates two landing barges which, by way of moored barges, supply fuel and other supplies to fishing trawlers. One of the company's barges goes on regular voyages to the Torres Strait islands supplying provisions and carrying away various products. This company, too, operates with a very flexible set of labour arrangements.

When all is boiled down, I was invited by counsel for Jardine and Seaswift Pty Ltd and for the State of Queensland, intervening, to refrain from dealing with the dispute for the following principal reasons:

. The terms of a federal award would expose the companies to the "restrictive" provisions of the Small Ships and Barges Award and, incidentally, to a lack of control over the crewing of vessels.

. All of this would, in turn, have a detrimental impact on the cost structures of the companies and, hence, impact on the costs to be borne by out-lying areas of North Queensland (see for example, the evidence of Messrs Gallagher, a witness introduced by the State Government, Mason and Faithfull).

. In any event, the companies were involved - and would continue to be involved - in intrastate trade in contrast to the main factor which moved the late Mr Commissioner J.G. Holmes as to Masons on 30 April 1980. (In a decision given in transcript in C Nos 5272, 5273 and 5274 of 1980, the Commissioner said the fact that that company was engaged in interstate trade was the primary factor that caused him to reject s.41(1)(d) arguments against federal award coverage for Masons).

. Awards of the Queensland Industrial Conciliation and Arbitration Commission already applied to the companies' operations and were more appropriate for the type of operations they carried out.

. The past performance of Masons in serving the north of Queensland left much to be desired, had contributed to high costs and there were, thus, legitimate fears to be held by communities in those areas if a federal award were to be applied to Seaswift (see the evidence of Messrs Whiteman, Cooke, Mason and Ngakyunnuokaa).

#### DECISION - MARITIME INDUSTRY 5

. In terms of modern concepts of flexibility of operation, including flexibility in the use of labour, Seaswift's operations would be in considerable jeopardy if a federal award were to be introduced and the company's flexibility of operation should remain undisturbed; there was no

evidence of dissatisfaction on the part of the company's employees with things the way they were.

. Federal awards had intruded little into any significant areas of employment in North Queensland.

. Even if the Commission were to make an award in terms of wages and conditions presently applying at Seaswift, it would come under considerable pressure, later, to supplant those with maritime industry (federal) standards; this would be too great a risk to take (pp. 1499/1500).

. Although much was put on behalf of the unions in evidence and argument that the maritime industry was, in the face of economic and technological change, undergoing significant change towards greater flexibility, change of that character had already taken place at Seaswift and Jardine Shipping and should not be interfered with (p.1504).

. The unions had sought the (Queensland) State awards which applied to Seaswift and Jardine Shipping.

. If the unions were seeking - as it seemed they were - to establish "a level playing field" as between Seaswift and other companies and the Mason group by bringing Seaswift and those other companies within a federal award, there were no grounds for doing so because of the significant difference between the respective types of ships operated; in any event, the Masons operation had contracted with the sale of "Albany" leaving only "Leichhardt" being operated by that group and there could be no comparison, particularly, between the vessels of Seaswift and others and the relatively larger "Leichhardt" (see transcript of reopened hearing on 27 November 1989).

Counsel for the State of Queensland adopted the submissions made on behalf of the applicants in the present matter and went on to emphasise, in the public interest, that a federal award would impact, undesirably, on costs to communities in North Queensland.

I have not set down here every single argument presented to me by the applicants and by the State of Queensland. I have sought to express the general flavour of these arguments, however, and I would add that I have taken account of all material that was placed before me.

For the unions, the following were the principal arguments in support of their contention that the Commission should exercise its discretion in favour of making a federal award:

. The public interest was in favour of settling the dispute and failure to exercise jurisdiction must be founded on extraordinary circumstances (see the remarks of Brennan and Deane JJ in the Queensland Electricity Commission Case.(2)

--

(2)72 ALR 1

6 DECISION - MARITIME INDUSTRY

. Operations carried out by respondents in North Queensland were clearly part of the maritime industry and awards of this Commission covered an extremely wide area of activities in that industry; the Commission had seen this industry as a national one (see, for example, Re Marine Pilots Case). (3)

. The history of federal award coverage in the industry showed a steady extension of such coverage at the same time paying regard to local or particular needs - the Small Ships Award confirmed the latter aspect as did the Tug Boat Industry Award 1982, (4) for example.

. Recent developments in the maritime industry - the report of the Maritime Industry Development Committee, for example - demonstrated significant changes, including restructuring, greater flexibility and greater commitment by the parties to a more efficient industry were now uppermost in the minds of those parties.

. Queensland (State) awards, which the respondents said applied to the industry in North Queensland, did not apply and, indeed, were not intended to apply to general cargo operations; in any event, there was evidence to at least cast grave doubts that they were being applied to such operations.

. It was not a fact, as suggested by the respondents, that maritime union officials were too far removed from North Queensland to attend quickly to industrial matters: the evidence (for example, that of Mr D. Sims of John Burke Ltd) refuted this.

. There was nothing unique about maritime operations in North Queensland as the evidence of several witnesses showed.

. Whatever was said in evidence by some witnesses about the past conduct of maritime union members and officials, such evidence was related to events in the '70's and did not reflect the attitude of the unions in the 1980's (see, for example, the evidence of the federal secretaries of the Merchant Service Guild and the Seamen's Union).

. Operators in the industry did not confine themselves to intrastate operations but were prepared to go where the work was and, in any event, it would not be novel for a federal maritime award to cover intrastate operations.

. It should not be assumed, as did the applicants in the current proceedings, that any award made would take a particular form or content; the unions had made an ambit claim (see the evidence of the federal secretaries of the Guild and the Seamen's Union at pp. 1033-7 and 1200-12); account must be taken of general change and changed attitudes in the industry which recognise the need for flexibility in relation to such matters as manning on a ship by ship basis and the nature of its trade; whatever might be said about past performance in the industry in North Queensland, this did not stem from the existence of a federal award.

Again, I emphasise that this summary covers the principal thrust of the response by the unions to the employer application. \_ \_

DECISION - MARITIME INDUSTRY 7

As I indicated earlier in this decision, Mason Shipping, a subsidiary of John Burke Limited, was served with the unions' log and I made a dispute finding accordingly. Mason Shipping is a respondent to the Self-Propelled Barges and Small Ships Award 1981 and the log is in terms of that award.

In brief, it can be said that Mason Shipping participated in the proceedings to protect its position in light of some of the evidence given in relation to its role in serving far-North Queensland ports and as to what might ultimately emerge if an award were to be made.

It is obvious that Seaswift has become a serious competitor to Masons having won contracts from it and, on more than one occasion in the proceedings before me, counsel for Seaswift and others portrayed the dispute found to exist by me as designed by the unions to put the Mason operation on a more competitive footing with that of his clients - in particular, Seaswift - by extending to Seaswift a federal award.

The attitude of Masons, therefore, must be seen in this context. It is a company long involved in shipping operations in Queensland waters. It has had a chequered experience going from a virtual monopoly in that area to now operating one vessel in it, m.v. "Leichhardt". It also operates two vessels under the Papua-New Guinea flag - m.v. "Niugini Kula" and m.v. "Sid McGrath". The latter had previously operated under the Australian flag. Since the proceedings in the current case, the company has sold m.v. "Albany" elsewhere on the Australian coast. (It is now my understanding, though not from material presented in this case, that "Leichhardt" is also up for sale.)

In the proceedings before me, the company presented evidence from its (then) North Queensland Manager, Mr D.W. Sims who later became the company's general manager.

Mr Sims's evidence was both helpful and important. It gave perspective to evidence about poor performance, in earlier years, of his company's operations in Queensland and dwelt on the changed attitudes, in more recent times, of the maritime unions in that he indicated he had been able to achieve their co-operation in furthering the continued operation of his company's vessels, though I understand that, now, the company is in liquidation.

Moreover, his evidence and the formal submission put on his company's behalf indicated that, should the Commission proceed to the making of an award out of the current matter, his company would be seeking major changes in the terms of such an award if it were to follow the Small Ships Award. The company - not surprisingly - supported the principle of federal award coverage in the industry in North Queensland, albeit with such an award being "tailored to meet the special needs of the Northern Australian location" (see the company's written submission presented to the Commission).

CONCLUSION



It has long been established that this Commission deals with applications under s.111(1)(g) and its predecessors on the merits of each particular case.

The applications are made under subparagraphs (ii) and (iii).

The first of these gives a discretion to this Commission to refrain from making an award if it is satisfied that it would be in the public interest to leave regulation of the work in question to an existing State award.

#### 8 DECISION - MARITIME INDUSTRY

The applicants argue that awards of the Queensland tribunal, sought by the unions, cover the work of Seaswift and Jardine Shipping. This is contested by the unions on the broad grounds that those awards do not extend to general cargo-handling operations or, at any rate, are not appropriate as to such operations and, on the evidence, are not being applied anyway. Late in the proceedings before me, I was informed that proceeding had been instituted before the Queensland Commission in an effort to clarify the operation of the awards.

Suffice it to say those proceedings were inconclusive. Counsel for the applicants told me further proceedings would be instituted in the Industrial Court of Queensland and that I would be informed of the outcome (p.1618 of the transcript). At the reopened hearing on 27 November 1989, I was told by counsel that the matter had not developed further (p.1664 of transcript).

So, whether the State awards do apply is in strong contention. And the unions say, anyway, that I should not be dissuaded from deciding in favour of a federal award even if the State awards do apply for, in their contention, they are entirely inappropriate and it is doubtful, on the evidence, that they are being applied.

It is not for this Commission to decide, in law, whether State awards might have application or not. Just the same, having studied the detailed material before me which led to the State awards in question, I have various doubts that they were intended to deal with general cargo operations and that they are being applied - at least by Seaswift. I hasten to add that by this I do not cast any reflection on Seaswift's principals. On the evidence before me - for example, that of Mr Faithfull - I am left with the impression that that company applies not unreasonable wages and conditions to its employees but that these are very much of its own development to suit its own particular type of operation. I got the same impression as to the practice of Jardine Shipping when Mr Frank Markert of that firm gave evidence (see, for example, p.144 of the transcript).

It seems to me that I do not have to decide this aspect of the matter entirely on the question whether existing State awards should be left to cover the field in the public interest. There is a wider question which I shall shortly address and that is whether Seaswift and Jardine Shipping are operating in a nationally regulated industry and, therefore, in the public interest, they should take their place in that industry when it comes to industrial award regulation.

There was much debate about what constituted the maritime industry and how far the federal tribunal had intruded upon it. In brief, it can clearly be said that the matter may long be debated but also that the federal tribunal has regulated all manner of aspects of the industry, progressively, since the beginning of federal conciliation and arbitration. A perusal of its awards proves that wide coverage even to the former Commission taking the view that marine pilots employed by a State authority were in a "national industry" (see Marine Pilots Case).(5)

In any event, I agree with the argument of counsel for the maritime unions that, even if the State awards are "industrially relevant", this is no barrier to the making of a federal award. It seems to me to be more to the point that the work being performed by Seaswift and Jardine Shipping should attract federal coverage because of the high incidence of such coverage of such work elsewhere in Australia. The (federal) Small Ships Award applies to work of a similar character to that being performed by Seaswift and Jardine. \_ \_

(5) (1970-71) 136 CAR 299 at pp. 302-303

#### DECISION - MARITIME INDUSTRY 9

The wider matter, however, remains to be resolved by reference to subparagraph (iii) of s.111(1)(g) and that is whether it would be in the public interest generally to make a federal award as to those two companies. The arguments presented on behalf of the companies and the Queensland Government go to this issue in large measure.

One of them was the application of a federal award would greatly increase costs and thus be of detriment to outlying communities in North Queensland. Extensive evidence was presented both by the Government and the companies in an effort to support this general proposition. I have already referred to those witnesses who so testified. I do not doubt that they testified in good faith but the argument and the evidence have failed to convince me for the simple reason that nobody knows at this point what any federal award that might emerge from these proceedings might contain. The unions' log of claims is drawn in terms of the Self-Propelled Barges and Small Ships Award. However, it was conceded by counsel for the maritime unions that the log was an "ambit log of claims" (see written summary of unions' submissions). The content of any award which might be made will, ultimately, be a matter for the Commission. Moreover, the Commission's principles as to first awards will need to be applied in such a circumstance.

Another major argument, together with evidence, was that the past performance of the maritime unions and/or their members in North Queensland operations to say the least left much to be desired. Mr Gallagher, in particular (a witness presented by the Crown) was little short of hostile in his views on this subject. Others, too, spoke of a variety of incidents which they said showed the record of the unions and their members in the North Queensland trade was not to be trusted. This was to be contrasted with the record of service given in that area by Seaswift vessels and their crews. It was notable that all of this evidence went to circumstances of many years ago - certainly most of it in the '70's.

The unions countered this by emphasising the marked changes in attitude that now prevailed in the industry. The evidence of the federal secretaries of the Seamen's Union and the Merchant Service Guild is relevant here. Moreover, I was referred to such documents as the Report of the Shipping Reform Task Force to the Minister for Transport and Communications, April 1989, as clearly indicating that, whatever might be said about the past performance of the maritime unions and their members, such was not the present day position.

I believe I can dispose of this aspect of the matter by reference to my own experience with maritime matters over the last 2-1/2 years in this Commission. All the evidence available to me suggests that there is now an attitude abroad within those unions that the future success of the industry demands an enlightened approach towards improved efficiency, increased productivity and co-operation with management in achieving those goals. A perusal of the material which convinced me to accede to the unions' claims for the first instalment of the structural efficiency increase - supported by employers - will, I believe, support the view I take on this issue.(6)

Anyone who wants to see the significant strides that have been made in this industry and contrast them with the strife and conflict of the past should read the publication Australian Shipping - Structure, History and Future published in 1989 by the Australian National Maritime Association.

--

(6)Print J0611 and detailed attachment

#### 10 DECISION - MARITIME INDUSTRY

Finally, I believe that I should address the general issue of applying s.111(1)(g). The case by case approach is well established as I have already noted. There is also the issue of competing factors. In this connection, I have been mindful of what was said in Electrical Trades Union of Australia and Northern Territory Electricity Commission and others(7) and which was affirmed by the High Court in the Queensland Electricity Commission; ex parte Electrical Trades Union of Australia.(8) At p.5, the High Court said:

"Ascertainment in any particular case of where the public interest lies will often depend on a balancing of interests, including competing interests, and be very much a question of fact and degree."

I have concluded, in this case, that the public interest will be better served if this Commission proceeds to bring the work in question within a federal award than if it were declined to do so and leave festering a dispute about how that work should be regulated.

I have also been persuaded in favour of the unions' arguments for a federal award by those remarks of Mr Justice Deane of the High Court in the case I have just cited. At pp. 12-13 Deane J said:

"The right to invoke the jurisdiction of the courts and other public tribunals of the land carries with it a prima facie right to insist upon the exercise of the jurisdiction invoked. That prima facie right to insist upon the exercise of jurisdiction is a concomitant of a basic element of

the rule of law, namely, that every person and organisation, regardless of rank, condition or official standing, is 'amenable to the jurisdiction' of the courts and other public tribunals (cf Dicey, An Introduction to the Study of the Law of the Constitution, 19th ed (1959), p.193). In the rare instances where a particular court or tribunal is given a broad discretionary power to refuse to exercise its jurisdiction on public interest grounds, the necessary starting point of a consideration whether such a refusal would be warranted in the case in which its jurisdiction has been fully invoked by a party must ordinarily be the prima facie right of the party who has invoked the jurisdiction to insist upon its exercise . . ."

This view was adopted by the High Court in The Australian Bank Employees Union; ex parte Citicorp Australia Ltd(9) when it said:

"The power conferred by s.41(1)(d), if exercised, would defeat a prima facie right to have the jurisdiction conferred by the Conciliation and Arbitration Act exercised. It may therefore conveniently be described as a 'power to refuse to exercise . . . jurisdiction . . .'"

In light of all these considerations, which I believe envelopes all of the principal arguments of the applicants, I reject the case put to me pursuant to s.111(1)(g) save for what I have said as to some companies earlier in this decision.

#### POSTSCRIPT

By letter dated 23 January 1990, the Acting Director-General of the (Queensland) Department of Employment, Vocational Education, Training and Industrial Relations advised the Industrial Registrar that:

--

(7)Print G4868; (1986) 302 CAR 467 (8)72 ALR 1 (9)(1989) 63 ALJR 602 at 603

#### DECISION - MARITIME INDUSTRY 11

"The Queensland Government has reconsidered its position in this matter and now wishes to withdraw the submissions made on its behalf under section 41(1)(d) (and subsequently section 111(1)(g)) in the matter of C No. 40130 of 1988."

I immediately gave the parties to this matter an opportunity of "letting me know by 31 January if you wish to make any response to the Government's decision either in writing or in proceedings before me".

On 24 January, the solicitors for Seaswift Pty Ltd and others wrote to the Registrar saying:

"We have had no prior notice of that [the Government's] decision and letter and are investigating the matter. We ask that the Commission take no action in relation to that letter at this stage.

It is anticipated that we may be asking for this matter to be relisted before Mr Commissioner Fogarty but shall not do so at present until the result of our investigation is known."

On 30 January, the representatives of John Burke Ltd advised me in writing that they did "not wish to make any response to the Queensland Government's decision".

By the time the Government's decision was conveyed to me, my decision had been completed but not issued. I delayed issuing it pending my hearing from the parties as to whether they wanted to make submissions to me about that decision. Save for what I have just recounted, I did not hear from the parties by the date I set for them to respond. It will be noted that I have referred to submissions and evidence placed before me by the Crown in right of the State of Queensland but that I have not found in favour of what the Crown put forward. I have not thought it necessary, therefore, to delete references to the Crown's submissions and evidence in light of what the Queensland Government put to me on 23 January.

One further piece of correspondence needs to be recorded. By letter of 5 February 1990 to the Industrial Registrar, the Acting Director-General of the (Queensland) Department of Employment, Vocational Education, Training and Industrial Relations said:

"I refer to my letter dated 23 January 1990 concerning the Queensland Government decision to withdraw from proceedings in matter C No. 40130 of 1988 re: Merchant Service Guild of Australia and others and Seaswift Pty Ltd and others before Mr Commissioner Fogarty of the Australian Conciliation and Arbitration Commission.

I wish to indicate that the letter should not be interpreted as 'taking sides' in respect to this matter as has been suggested to the Government. The Queensland Government has confidence that the Commission will bring down its decision based on the merits of the case having regard to the submissions by the various parties."

Appearances:

R. Kenzie QC, M. Kimber, T.A. Allingham, M. Fleming, J.F. Lawson, N. Shepherd, J. Scule, L. Sims for the Merchant Service Guild of Australia, The Australian Institute of Marine and Power Engineers and The Seamen's Union of Australia.

A. Herbert, of counsel, for Seaswift Pty Ltd, Torres Strait Navigation Pty Ltd, Riverside Tug and Barge Company, Gulf Freight Services, Tropical Traders Pty Ltd, Malaric Pty Ltd, ART Shipping and Trawler Agency and Jardine Shipping.

12 DECISION - MARITIME INDUSTRY

K.J.M. Hunt and J. Ward for Mason Shipping

G.J. Fleetwood for Jardine Shipping.

P. McKendry for Royal Tropic Cruise Line, Cape York Relaxa Cruises and Sandford Pty Ltd.

G. Martin, of counsel, for Her Majesty The Queen in right of the State of Queensland, intervening.

Dates and places of hearing:

1988. Brisbane: September 19; October 26. Cairns: November 28, 29, 30; December 1, 2, 13, 14, 15.

1989. Brisbane: March 6, 7, 8, 9, 10; June 13, 14; November 27. Cairns: May 29, 30, 31; June 1. Sydney: March 29, 30; June 22. \*\* End of Text \*\*

\* \* END OF TEXT \* \*

AIMPE - PHEWV Award.

**W.G. McNALLY JONES STAFF**

LAWYERS



LAW SOCIETY BUILDING  
LEVEL 10 170-172 PHILLIP STREET, SYDNEY, N.S.W. 2000

---

TELEPHONE: 9233 4744    FACSIMILE: 9223 7859    DX: 283    EMAIL: law@mcnally.com.au    WEB: www.mcnally.com.au

6 March 2009

Our Ref:WGMc:NK:TM:901019

The Industrial Registrar  
Australian Industrial Relations Commission  
GPO Box 1994  
MELBOURNE VIC 3000

By email: [amod@air.gov.au](mailto:amod@air.gov.au)

Dear Registrar,

**RE: PORT HARBOUR AND ENCLOSED WATER VESSELS AWARD 2010  
AM2008/49 and AM2008/41**

We are the lawyers for the Maritime Union of Australia and the Australian Institute of Marine and Power Engineers.

We enclose our submissions for the making of a modern award known as the "Port Harbour and Enclosed Water Vessels Award 2010".

We will be attending the public consultations on 19 and 27 March 2009.

Yours faithfully,

**W.G. McNALLY JONES STAFF**

**BILL McNALLY**

E-mail: [bill@mcnally.com.au](mailto:bill@mcnally.com.au)

---

Entitled to practice in New South Wales, Victoria, Queensland, South Australia, Western Australia, the Australian Capital Territory and any federal court in Australia.

**PRINCIPALS:** W.G. McNALLY, Acc. Spec. (Employment & Industrial Law) • D. T. TRAINOR, Acc.Spec. (Personal Injury.)

R. F. BRENNAN • M. E. JALOUSSIS (B.Comm. LLB).

**CONSULTANTS:** THE HON. LANCE WRIGHT QC • M.R.TURNER.

**SENIOR ASSOCIATES:** N.KEATS • A. McROBERT

**ASSOCIATE:** D. HILL

ABN 71 011 954 118

**AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

*Workplace Relations Act 1996*

**Award Modernisation**

**Port and Harbour Services**

(AM2008/49)

**Maritime**

(AM2008/41)

**SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA**

**AND**

**THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS**

**IN SUPPORT OF THE MAKING OF THE**

**PORT HARBOUR AND ENCLOSED WATER VESSELS AWARD 2010**

**Introduction**

1. It is submitted that the Commission should make the Port Harbour and Enclosed Water Vessels Award 2010 in accordance with attachment "A" to these submissions. ("Modern Award")

2. **Coverage**

This Modern Award is expressed to cover employers in the Port, Harbour and Enclosed Water Vessels Industry and their employees. The industry is defined as "employers engaged in or in connection with vessels."

---

**Filed by:**

W.G. McNally Jones Staff

**Address:**

Level 10, 170 Phillip Street  
SYDNEY NSW 2000

Phone No: 9233 4744

Fax No: 9223 7859

**DX: 283 SYDNEY**

REF: WGM:NK:TM:811066



## 3. The award replaces the following instruments:

| <b>AIRC Industry</b>      | <b>Publication Title</b>  | <b>Pub ID</b> |
|---------------------------|---|---------------|
| Port and harbour services | Port Services Award 1998  | AP792489      |
| Maritime industry         | Ketches & Schooners Award   | AN150068      |
| Maritime industry         | Shipping Award  | AN170095      |
| Port and harbour services | Deckhands (Passenger Ferries, Launches and Barges) Award                                | AN160097      |
| Port and harbour services | Masters, Mates and Engineers Passenger Ferries Award                                    | AN160199      |
| Port and harbour services | Marine Charter Vessels (State) Award  | AN120330      |
| Port and harbour services | Motor Boats and Small Tugs (State) Award  | AN120350      |
| Port and harbour services | Motor Ferries State Award   | AN120351      |
| Port and harbour services | Wire Drawn Ferries (State) Award  | AN120650      |
| Port and harbour services | Masters and Engineers' Award - Port of Brisbane 2003                                    | AN140164      |
| Port and harbour services | Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - | AN140165      |

|                           |   |          |
|---------------------------|---|----------|
|                           | State (Excluding The Port of Brisbane ) 2003                    |          |
| Port and harbour services | Port Authorities Award - State 2003                             | AN140213 |
| Public Transport Industry | Stradbroke Ferries Pty Ltd Enterprise Award 2005                | AN140280 |
| Tourism industry          | Whitsunday Charter Boat Industry Interim Award - State 2005     | AN140315 |
| Maritime industry         | Maritime Award - Brisbane River and Moreton Bay 2003            | AN140163 |
| Maritime industry         | North Queensland Boating Operators Employees Award - State 2003 | AN140190 |

4. We have not included in this modern award:
- a. Provisions contained in pre-reform enterprise awards (including NAPSAs).
  - b. Provisions contained in long service leave awards;
  - c. Provisions contained in Victorian minimum wage orders;
  - d. Provisions contained in superannuation awards.
  - e. In AM2008/49 we have sought a modern award known as "Dredging Industry Award 2010." The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:
    - i) Dredging Industry (AWU) Award 1998 – AP778702
    - ii) Marine Engineers (Non Propelled) Dredge Award 1998 – AP788027

iii) Maritime Industry Dredging Award 1998 – AP787991

f. In AM2008/49 we have sought a modern award known as “Tug Industry Award 2010.” The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Tug and Barge Industry (Interim) Award 2002 – AP824200

ii) Tug Boat Industry Award 1999 – AP799111

g. In AM2008/41 we have also sought a modern award known as “Seagoing Industry Award 2010” The provisions contained the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Maritime Industry Seagoing Award 1999 – AP788080

h. In AM2008/49 we have sought a modern award known as “Port Authorities and Port Construction Award 2010.” The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Maritime Union of Australia (Ship Services) Award 2002 AP816677

ii) New South Wales Port Corporations Award 1999 AP791641

iii) Ports of Victoria Consolidated Administration Award 1998 - AP792487

iv) Queensland Regional Port Authorities and Corporations Employees Interim Award 2000 - AP794137

v) Regional Port Authority Officers' (Queensland) Award 1999 - AP794800

vi) Tasmanian Ports Corporations Award 2002 - AP819542

vii) Victorian Port and Harbour Services Consolidated Operational Award  
1998 AP802100

i. In AM2008/49 we have sought a modern award known as "Stevedoring Industry Award 2010." The provisions in the following pre-reform awards (non enterprise) have been incorporated into that award rather than this modern award:

i) Stevedoring Australian Vocational Training System Award 2000 -  
AP796383

ii) Stevedoring Industry Award 1999 - AP796113

j. In AM2008/49 we have sought a modern award known as "Port Authorities and Port Construction Award 20." The provisions in the following NAPSA's have been incorporated into that award rather than this modern award

i) Port Stanvac Award AN160199

ii) Marine Stores Award AN160199

5. We have not included the Self-Propelled Barge and Small Ships Industry Award 2001 which is referred to in the Full Bench Statement dated 30 January 2009 for the Maritime Industry. It only applies to Perkins Shipping Group;

6. We have not included the Bulk Terminals Award - State 2003 - AN140048 which is referred to in the Full Bench Statement dated 30 January 2009 for the Port and Harbour Services Industry as it only applies to Queensland Sugar Limited;

**Terms of the Modern award**

7. The table below sets out the source of each of the terms of the Modern Award.

| Clause                          | source        |
|---------------------------------|---------------|
| Clause 1 – Title -              | New           |
| Clause 2 –<br>Commencement date | AIRC template |

|   |   |
|---|---|
| Clause 3 – Definitions and interpretation | <ol style="list-style-type: none"> <li>1. Definitions of Act, employee, employer, enterprise award and NES are from the AIRC template;</li> <li>2. Definitions of Bunker Barge, Shipkeeper, Small Tug and Winch Driver are from clause 2 of the Motor Boats and Small Tugs(State) Award</li> <li>3. Definitions of Ferry Engine Driver are from clause 2 of the Wire Drawn Ferries (State) Award.</li> <li>4. Definitions of Non self-propelled bunker barge, and Self-propelled bunker barge are from clause 5 of the Port Services Award 1998</li> <li>5. Definitions of Port and Vessel are from the Navigation Act 1912.</li> </ol> |
| Clause 4-coverage of the award            | New clause  |
| Clause 5-access to the award and the NES  | Model provision   |
| Clause 6 – NES and this award             | Model provision   |
| Clause 7 – award flexibility              | Model provision   |
| Clause 8 – consultation                   | Model provision   |
| Clause 9 – dispute resolution             | Model provision   |
| Clause 10 – types of employment           | New clause with casual loading set at 25%.  |
| Clause 11 – Employer and employee duties  | New clause  |
| Clause 12 – termination of employment     | <ol style="list-style-type: none"> <li>1. Used the model clause.</li> <li>2. Return to place of engagement added from: <ol style="list-style-type: none"> <li>a. Master and Engineers' Award - Port of Brisbane 2003</li> <li>b. masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 KW.B.P. and Under - State (Excluding The Port of Brisbane ) 2003</li> </ol> </li> </ol>  |
| Clause 13 – redundancy                    | Model provision   |
| Clause 14 – minimum                       | From Part B of Motor Boats and Small Tugs (State) Award except  |

| wages                  | for the classification of master which is from the Port Services Award   |
|------------------------|--|
| Clause 16 – Allowances | <ol style="list-style-type: none"> <li>1. Clause 16.1 is from clause 10.5 of Masters and Engineers' Award - Port of Brisbane 2003</li> <li>2. Clause 16.2 is from clause 8.7.1 of Motor Boats and Small Tugs (State) Award</li> <li>3. Clause 16.3 is from clause 14 of the Shipping Award</li> <li>4. Clause 16.4 is from clause 11.4 of the Port Services Award</li> <li>5. Clause 16.5 is from clause 15 of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>6. Clause 16.6 is derived from clause 14 of Marine Charter Vessels (State) Award</li> <li>7. Clause 16.7 is from clause 11.2 of Port Services Award</li> <li>8. Clause 16.8 is from clause 4.1.1 of Part 5 of Port Services Award combined with clause 18.5 of Motor Boats and Small Tugs (State) Award</li> <li>9. Clause 16.9 is from clause 9 of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>10. Clause 16.10 is from clause 4(3) of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>11. Clause 16.11 is from clause 4(4) of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>12. Clause 16.12 is from clause 4(5) of the Deckhands (Passenger Ferries, Launches and Barges) Award</li> <li>13. Clause 16.13 is from clause 34(a) of the Shipping Award</li> <li>14. Clause 16.14 is from clause 15(1) of the Masters, Mates and Engineers Passenger Ferries Award</li> <li>15. Clause 16.16 is from clause 8.2 of Part 2 of Port Services Award</li> <li>16. Clause 16.16 is from clause 5.3.2 of Masters, Mates And Engineers' Award, Motor Vessels 2500 B.H.P./1866 kW.B.P. and under - State (Excluding the Port Of Brisbane) 2003</li> <li>17. Clause 16.17 is from clause 9.2 of Wire Drawn Ferries Award</li> <li>18. Clause 16.18 is from clause 13 of Motor Boats And Small Tugs (State) Award</li> <li>19. Clause 16.19 is from clause 10.4 of North Queensland Boating Operators Employees Award - State 2003</li> <li>20. Clause 16.20 is from clause 4.1 of Part 3 of Port Services Award</li> <li>21. Clause 16.21 is from clause 48 of the Shipping Award</li> <li>22. Clause 16.22 is from clause 4.6 of Part 3 of Port Services Award.</li> <li>23. Clause 16.23 is from clause 4.7 of Part 3 of Port Services Award.</li> </ol> |

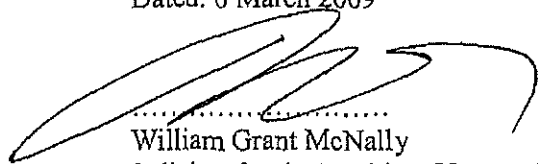
|  |   |
|--|---|
|  | <p>24. Clause 16.24 is from clause 4.8 of Part 3 of Port Services Award.</p> <p>25. Clause 16.25 is from clause 5.3 of North Queensland Boating Operators Employees Award - State 2003</p> <p>26. Clause 16.26 is from clause 8.1 of North Queensland Boating Operators Employees Award - State 2003</p>                        |
| Clause 16 – Mixed function                           | New   |
| Clause 17 – Payment of wages                         | New   |
| Clause 18 - Superannuation                           | Model clause  |
| Clause 19 – ordinary hours of work and rostering     | <p>NES supplemented by</p> <ol style="list-style-type: none"> <li>1. Clause 19.2 from clause 6.1 of Masters and Engineers' Award - Port of Brisbane 2003 – span on hours</li> <li>2. Clause 19.4 is based on clause 6 of Deckhands (Passenger Ferries, Launches and Barges) Award – avoidance of physical exhaustion</li> </ol> |
| Clause 20 - breaks                                   | New clause  |
| Clause 21 – Overtime and penalty rates               | New Clause  |
| Clause 22 - shiftwork                                | New Clause  |
| Clause 23 – annual leave                             | <p>NES supplemented by</p> <ol style="list-style-type: none"> <li>1. Adding a loading of 17.5% except for shift workers (20%) from Motor Boats and Small Tugs (State) Award.</li> </ol>   |
| Clause 24 – Personal/carer's and compassionate leave | Cross references the relevant NES.  |
| Clause 25 – Community Service leave                  | Cross references the relevant NES.  |
| Clause 26 – public holidays                          | Cross references the relevant NES and inserted a rate of pay for work on public holidays.   |
| Clause 27 – Accident pay                             | Model provision.  |

## Conclusion

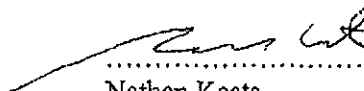
8. We submit that the Port Harbour and Enclosed Water Vessels Award 2010 should be made.

9. Bill McNally and Nathan Keats will attend the public consultations on 19 and 27 March 2009 to answer questions and make submissions in relation to draft awards proposed by other interested organisations.

Dated: 6 March 2009



William Grant McNally  
Solicitor for the Maritime Union of Australian



Nathan Keats