

FAIR WORK COMMISSION

Matter No: AM2016/5

Submissions by Maritime Industry Australia Limited

1. Maritime Industry Australia Ltd (**MIAL**), an industry peak body representing vessel owners, operators and employers across the maritime industry, files this submission on behalf of its members.
2. This submission is made in response to the Statement published by the Full Bench on 21 August 2019 inviting interested parties to file submissions concerning the draft determinations for the *Seagoing Industry Award 2010 (Seagoing Award)*, *Ports, Harbours and Enclosed Water Vessels Award 2010 (Ports and Harbours Award)* and the *Marine Towage Award 2010 (Marine Towage Award)*.¹
3. MIAL supports the Full Bench decision not to amalgamate these awards.²
4. MIAL notes the original issue identified by the Full Bench in *Maritime Union of Australia v Sea Swift Pty Ltd* [2016] FWCFB 651 and later considered in *Ports, Harbours and Enclosed Water Vessels Award 2010, Seagoing Industry Award 2010 and Marine Towage Award 2010* [2017] FWCFB 1138. That is, where a predominant part of a business is covered by an award, that particular award applies to all of its operations regardless of the different types of operations it performs. The Full Bench has determined that this is not appropriate.³
5. The key outcome of the Commission's approach following this decision is that employers need to look at individual parts of their business to determine which award applies, consistent with the modern awards objective.
6. MIAL supports adjustments to the coverage provisions of these awards, as suggested by the Commission, to the extent that it is needed to provide clarity on when a particular award applies to an employee or employer where there is coverage under more than one award. This is in line with the Commission's need to have regard to avoiding the overlap of awards and minimising the number of awards that may apply to a particular employee or employer; including provision of clear rules where there is any potential overlap in coverage.⁴

¹ 4 Yearly Review of Modern Awards—*Seagoing Industry Award 2010, Ports, Harbours and Enclosed Water Vessels Award 2010, Marine Towage Award 2010* [2019] FWCFB 5596.

² 4 yearly review of modern awards - *Seagoing Industry Award 2010; Ports, Harbours and Enclosed Water Vessels Award 2010; Marine Towage Award 2010* [2019] FWCFB 2910.

³ *Ports, Harbours and Enclosed Water Vessels Award 2010, Seagoing Industry Award 2010 and Marine Towage Award 2010* [2017] FWCFB 1138 at [19] and [33].

⁴ Ministerial request under s576C *Workplace Relations Act 1996* at [9], as referenced in Four yearly review of modern awards [2015] FWCFB 620 at [11].

Seagoing Award and Ports and Harbours Award

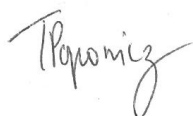
7. MIAL notes that both of these awards expressly exclude requisite awards when employers are covered by the awards *"in respect of their operations"*:
 - a. The draft determination for the Seagoing Award at clause 4.5(e)(i) and (ii) excludes the Marine Towing Award and the Ports and Harbours Award; and
 - b. The draft determination for the Ports and Harbours Award at clause 4.4(a) and (b) excludes the Marine Towing Award and the Seagoing Award.

Marine Towing Award

8. However, the proposed new clause 4.3 for the Marine Towing Award does not include reference to the Seagoing Award when it reads:

"4.3 This award does not cover employers and employees wholly or substantially covered by the following awards:
(a) the Dredging Industry Award 2010; or
(b) the Maritime Offshore Oil and Gas Award."
9. Clause 4.4 of the Marine Towing Award draft determination goes on to confirm that *"this award does not cover employers in respect of their operations covered by the Ports, Harbours and Enclosed Water Vessels Award 2010."*
10. There is no reference to the Seagoing Award in these clauses, which is inconsistent to the drafting of the Seagoing Award and the Ports and Harbours Award as articulated above.
11. Although clause 4.10 of the Marine Towing Award draft determination makes it clear that *'where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed ... and to the environment in which the employee normally performs the work'*, MIAL respectfully submits that these awards should be consistently drafted to avoid ambiguity.
12. Therefore, the Marine Towing Award at clause 4.3 as proposed should be amended to include reference to the Seagoing Award as 4.3(c).
13. In conclusion, MIAL contends that the draft determinations proposed by the Commission on 21 August 2019 are otherwise appropriate.

Submitted on behalf of:



Maritime Industry Australia Limited
11 September 2019