

4 Yearly Review of Modern Awards

Award: Seagoing Industry Award

Matter Number: C2019/5259

Date 1 December 2023

Submission in Response from Maritime Industry Australia Ltd (MIAL) in relation to Submission on behalf of the Maritime Union of Australia (MUA) Division of the CFMMEU

1. Maritime Industry Australia Ltd (MIAL) is an industry peak body whose members employ persons engaged in the seagoing industry who are covered by the Seagoing Industry Award 2020 (SIA), including operators of vessels granted a Temporary Licence under Schedule A of the SIA. MIAL also represents vessel owners and operators covered by the Marine Tourism and Charter Vessels Award, The Maritime Offshore Oil and Gas Award.
2. MIAL did not initially consider this matter would directly impact maritime awards in which MIAL's members had an interest, although MIAL has recently become aware of the provisional view of the Fair Work Commission to expand the awards subject to this review as well as the Submission made on behalf of the MUA division of the CFMMEU.

Maritime Offshore Oil and Gas Award

3. MIAL notes the submissions advanced on behalf of the MUA in relation to the Maritime Offshore Oil and Gas Award that the award does not require amendment and agrees with that submission. The position of Provisional Integrated Rating is by its nature transitional as progression towards the position of Integrated Rating and in any event, as submitted on behalf of the MUA, the aggregated salary exceeds the C13 rate.

Marine Tourism and Charter Vessel Award

4. In respect to the submissions insofar as they relate to the Marine Tourism and Charter Vessel Award, in the MUA's submission, it states that it is not clear whether the employee transitions from crew level 1, to crew level 2 if the employee has not completed the 5 day introduction to Deckhand Course and proposes an amendment to clause 12.1 (which describes the duties of crew level one).
5. Clause 12.2(a) states:

“ After completing the first 3 months of employment (probationary period) and upon the completion of the Introduction Deckhand Course or relevant experience/qualifications as determined by the employer, the employees' wage level will rise to that of the Crew Level 2 wage”

6. In MIAL's submission this is clear and unambiguous in terms of the transitional nature of the rate of crew level 1 to crew level 2. Where a deckhand course is not undertaken the relevant skills and experience to transition is determined by the employer after 3 months. The proposed amendment on behalf of the MUA would in MIAL's submission create ambiguity where none exists.
7. Accordingly, MIAL opposes the proposed variation and submits that no variation is required as the existing award clearly articulates the transitional, time limited nature of the crew level 1 wage rate.

Seagoing Industry Award

8. The MUA submits that the occupations listed in the table attached to the Statement of the Full Bench in matter C2019/5959 [2023] FWBFC 168 are discrete classifications that do not transition to another classification on ships granted a temporary licence under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.
9. To provide the Commission further context, the provisions of Schedule A of the SIA apply to ships granted a temporary licence who have, in the previous twelve months completed at least two voyages pursuant to a temporary licence.¹ This means that almost all vessel to which Schedule A applies are foreign vessel who are covered by the SIA only intermittently. This differs from other parts of the SIA which consistently capture the operation of Australian flagged or crewed ships operating in the seagoing industry.
10. The unique nature of Schedule A (previously Part B of the SIA when originally made) was demonstrated at the time it was made pursuant to the then Ministers' Award Modernisation Request under s576C(1) of the Workplace Relations Act 1996, which requested that in making of award conditions that covered permit ships² the AIRC have regard to employers and employees regularly moving in and out of the Australian jurisdiction. Ships granted temporary licences do move in and out of the Australian jurisdiction.
11. Engagement of seafarers working on ships does not operate in the same way in the international shipping industry (ships covered by Schedule A would generally be considered part of the international shipping industry) as it does in the Australian industry. While conditions vary, MIAL understands that generally seafarers are engaged in a particular role or classification for the duration of their engagement on board that vessel (usually between 4-9 months and not more than 11 months) after which they will usually take a period of leave and then may rejoin another vessel in the operators fleet, potentially in a more senior capacity. Seafarers will be asked to

¹ Regulation 1.15B of the Fair Work Regulations 2009

² Permit ships referred to ships issued either a Single Voyage Permit or Continuing Voyage Permit pursuant to the Navigation Act 1912 (now repealed) which predated the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and temporary licences.

sign a seafarers employment agreement that covers the duration of their engagement on that vessel which among other things sets out the classification in which they are engaged.³

12. The classifications identified in the FWC statement table as being below the C13 rate were, amongst other classifications, inserted in the SIA via application to vary by the MUA as part of the Two Year Modern Award Review in matter number AM2012/326.⁴
13. As part of that proceeding, a witness statement by Mr Dean Summers who attested he was the International Transport Workers Federation (ITF) Flag of Convenience National Co-ordinator for Australia, was provided to the Commission. The witness statement was submitted in support of the variation sought by the MUA in matter number AM2012/326 and is attached as **Annex 1** to this submission.
14. Mr Summers in his statement gave a brief summary description of the classification positions which were sought to be included. In so far as classifications that are the subject of the proposed variation by the MUA under this matter the witness statement highlights that at least some of the classification descriptions are transitional in nature, including:
 - a. Deck boy being a classification for a seafarer in their first 12 months at sea performing duties directed by the bosun;
 - b. Catering boy being a trainee messroom steward performing duties as directed by the messroom steward;
 - c. Wiper is a trainee oilmen or greaser and is engaged in this position for the first 6 months performing duties at the direction of the donkeyman doing tasks set by the engineer in the engine room.
 - d. The ordinary seaman is a person who has been at sea for 12 months as a deck boy but does not yet have enough time to be qualified as an Able Seaman.⁵
15. Each of these descriptions indicates that the classifications are transitional in nature with opportunities for seafarers to progress with further experience.
16. While MIAL does recognise the provisional view expressed by the Full Bench that the minimum rate in any award should be the C13 rate and that any rate below it ought to be on a transitional basis, with that transitional period not to exceed 6 months, MIAL also submits that:
 - a. Schedule A of the SIA is unique in that it applies to workers who live and work on foreign ships and who almost exclusively reside outside of Australia;

³ The Maritime Labour Convention 2006, regulation 2.1, Standard A2.1.4 _ Australia has ratified the Maritime Labour Convention and has implemented its terms in domestic law.

⁴ Schedule 5, Item 6 Review of All Modern Awards (Other Than Modern Enterprise Awards and State Public Sector Awards) within the first two years.

⁵ Annex 1 Witness Statement of Dean Summers dated 24 October 2012.

- b. The operation of the Fair Work Regulations means that this schedule of the Award applies to employees and employers on ships granted a temporary licence intermittently;
 - c. The industry to which these vessels below operate in such a way that the crew compliment is set according to the Maritime Authority in the flag state and is consistently applied meaning progression to different ranks on board would usually happen at the conclusion of a seafarers' tour of duty;
 - d. At least some of the occupations which the Statement highlights have been identified as transitional in nature at the time that that the SIA was varied to include them.
 - e. Where there is clear transitional arrangements to the next classification level, notwithstanding some may exceed the time frame contained in the provisional view of the FWC, these are long standing and clearly understood progressions within the international maritime industry, which is the industry to which Schedule A of the SIA applies.
17. Based on the above, MIAL is of the view that the positions described as OS (ordinary seaman), Wiper, Deck Boy, Catering Boy, Second Cook, Messroom Steward are transitional and accordingly to maintain the existing table in clause A.1.1 is not inconsistent with the Expert Panel's conclusions in the AWR 2023 decision referenced in paragraph 8 of the Statement from the FWC dated 22 September 2023.

Alternative Submission

18. In the event that notwithstanding the explanation provided in the witness statement from Mr Summers the FWC is minded to transition classifications in the manner described in the MUA's submission at paragraph 14, MIAL submits that period described after which a different wage rate is payable for the existing classifications in receipt of a rate aligned with the C14 rate is 6 months from commencement of their position on board the vessel. This would be a closer reflection of the understanding of the role descriptions and transitional time frames articulated about each classification when they were inserted in the SIA on application by the MUA.

Annex 1 Witness Statement of Dean Summers

FAIR WORK AUSTRALIA

SCHEDULE 5 ITEM 6 – REVIEW OF ALL MODERN AWARDS (OTHER THAN MODERN ENTERPRISE AWARDS AND STATE PUBLIC SECTOR AWARDS) AFTER THE FIRST TWO YEARS

SEAGOING INDUSTRY AWARD 2010 AM 2012/326

STATEMENT OF DEAN SUMMERS

On the 24th day of October 2012 I, Dean Summers of
in the State of New South Wales, say as follows:

1. I am the International Transport Workers' Federation (ITF) Flag of Convenience National Co-ordinator for Australia and have been since 2001.
2. The ITF is an International Trade Union Federation of Transport Workers' Unions. It represents the interests of Transport Workers' unions before bodies which take decisions affecting jobs, employment conditions or safety in the transport industry such as the International Labour Organisation, and the International Maritime Organisation.
3. My role is to coordinate the Flag of Convenience campaign in Australia. This is a campaign to protect the entitlements of Seafarers employed on Flag of Convenience vessels. A flag of convenience vessel is one that flies the flag of a country other than the country of ownership.
4. I am responsible for 3 Inspectors and 2 formally trained contacts around Australia. In addition, I am responsible for volunteers provided by affiliated unions.
5. As part of my duties I inspect vessels that come into Australian ports on a weekly basis. In addition I read reports prepared by my inspectors, contact

and volunteers following inspections they have performed. As part of each of these inspections the ITF collects a number of documents including:

- (a) The Ships particulars. This is a document that sets out the technical aspects of the vessel. It covers its dimensions, cargo capacity, engine details and IMO number.
 - (b) A crew list. This is a document that itemises the classifications of seafarers employed on the vessel and the names of the individuals so employed; and
 - (c) The minimum safe manning certificate. This document provides the minimum number of persons to be employed on a vessel when at sea and their classifications.
6. There is no single set of conditions that applies to the foreign flagged vessels the ITF Australian inspectorate has inspected. The most common, however, is the *ITF Uniform TCC Collective Agreement*.
 7. This year the Minister for Infrastructure and Transport issued a Determination under the *Shipping Registration Act 1981* that the wages for the classifications set out in the *ITF Uniform TCC Collective Agreement* be set as minimum wages for vessels registered on the Australian International Shipping Register. Those classifications are the ones employed on vessels operating under permits issued under the *Navigation Act 1912* and which will now operate under temporary licences issued under the *Coastal Trading (Revitalising Australian Shipping) Act 1912*.
 8. The determination lists twelve (12) classifications that are not referred to in Part B of the *Seagoing Industry Award 2010* but are employed on the vessels the ITF Australian inspectorate has inspected. Those classifications are: radio officer, electrical engineer, electrician, carpenter, fitter/repairer, donkeyman, second cook, mess room steward, ordinary seaman, wiper, deck boy and catering boy.

9. In addition to the classifications referred to in the determination ships sometime employ persons in other classifications. For example gas carriers usually employ a cryogenic engineer and larger vessels employ riding gangs of maintenance personnel.
10. It is also the case that some manning agencies use different titles for the classifications referred to in the determination.
11. A short description of the worked performed by the 12 additional classifications is as follows:
 - (a) The **Radio Officer** is in charge of all electrical communications for a vessel and reports directly to the Master. They are typically employed on vessels that have a lot of communication equipment.
 - (b) The **Electrical Engineer** is usually employed on vessels which have refrigerated containers. They are there to ensure that the power is continuously maintained to those containers.
 - (c) The **Electrician** is responsible for the generator and main power supply for the vessel.
 - (d) The **Carpenter** is a traditional position on a vessel that is not seen very often any more. When employed that perform the work of a general handyman doing odd jobs on the vessel.
 - (e) The **Fitter/repairer** usually is skilled in welding. They perform heavy ship maintenance such as repairing hatches and cranes.
 - (f) The **Donkeyman** is the leading man in the engine room and is responsible for the oiler, greaser, motorman and fireman.
 - (g) The **Second Cook** assists the Cook in their duties as required.
 - (h) The **Mess room Steward** cleans the dishes, serves the food to the officers and cleans the mess room.

- (i) The **Ordinary Seaman** is a person who has been at sea for 12 months as a deck boy but does not yet to have enough sea time to be qualified as an Able Seaman. They do the same duties as an Able Seaman.
- (j) The **Wiper** is trainee greaser or oilman. It is the classification given to greasers or oilmen in their first 6 months. They work as directed by the donkeyman doing the tasks set by the engineer in the engine room.
- (k) The **Deck Boy** is a seafarer in their first 12 months at sea. They work under the direction of the Bosun and assist them in their duties.
- (l) The **Catering Boy** is a trainee Mess room Steward and performs duties as directed by the Mess room Steward.

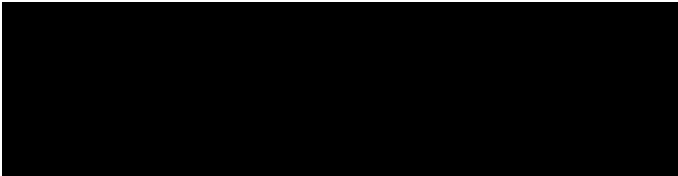
Able Seaman

12. The able seaman is responsible for:

- (a) the general mooring and unmooring of vessels under the direction of a Deck Officer.
- (b) facilitating the unloading and loading of cargo, but not the actual unloading or loading of the cargo. For example, they would open or close hatches and ensure adequate lighting and the rigging of ships gear.
- (c) security aboard the vessel under the direction of the designated security officer.
- (d) performing fabric maintenance of the vessel such as chipping and painting.
- (e) performing repair work such as chipping, painting, overhauling deck equipment and maintaining safety equipment.
- (f) performing watches at sea they under the direction of a Deck Officer.
- (g) Ensure the safety and integrity of the gangway system.

- (h) Tend and maintain appropriate safe mooring practices while the ship is moored in port.
- (i) Keeping the ship neat and tidy.

Dated: 24th October 2012



Dean Summers