

FAIR WORK COMMISSION

Matter No: AM2016/5

Modern Award Review: Ports, Harbours and Enclosed Water Vessels Modern Award 2010, Seagoing Industry Award 2010, and the Marine Towing Award 2010.

SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA

1. These submissions are advanced by the Maritime Union of Australia (**MUA**) in response to the Statement published by the Full Bench ([2018] FWCFB 504), calling for submissions on three revised draft determinations.
2. The Draft Determination for the *Marine Towing Award 2010* is appropriate.
3. The Draft Determination for the *Seagoing Industry Award 2010* and the *Ports, Harbours and Enclosed Water Vessels Award 2010* ought not, and cannot be made: see s 163(1) of the *Fair Work Act 2009* (**the FW Act**).
4. Putting aside the minor typographical error in Item 7 of the Draft Determination for the *Seagoing Industry Award 2010* - the reference to “clause 4.4(v)(i)” should be replaced with “clause 4.4(vi)” – the issue remains that the operation of the inclusion and exclusion provisions of these awards in the terms proposed will leave some employers and employees award free if these Draft Determinations are made.
5. The Draft Determinations fail to satisfy the union’s concerns raised in their submissions of 31 July 2017. The same example given in those submissions remains apposite.
6. To restate the issue. If you consider what award covers an employer utilising a dry cargo vessel of up to 19,000 tonnes, to carry cargo from Cairns to Weipa you would do the following:

Step 1: Is the employer covered by the *Seagoing Industry Award 2010*?
7. Yes. A dry cargo vessel of up to 19,000 tonnes is a “vessel” as defined in cl 3.1 of the *Seagoing Award*. The business of the employer is in the “seagoing industry” as it operates vessels trading as cargo vessels, which in the course of trade proceed to sea on voyages outside the limits of bays, harbours or rivers (namely, from Cairns to Weipa). Persons employed as the Master, Chief Engineer, First Mate, Chief Integrated Rating (and the other classifications listed in cl 13 of the *Seagoing Award*), working on such a dry cargo vessel are therefore within the coverage of cl 4.1 of the *Seagoing Award*.

Step 2: Does any exclusion provision of the *Seagoing Industry Award 2010* apply?
8. Yes. The proposed cl 4.5(a) of the Draft *Seagoing Award*, referring specifically to “vessels as described in clause 4.1 of the” *Ports, Harbours and Enclosed Water Vessels Award 2010* (**the Enclosed Waters Award**), does not assist because the dry cargo vessel travelling between Cairns and Weipa will still be a vessel described in 4.1 of the *Enclosed Waters Award* – that is, it would still be a vessel that operates at sea on activities not covered by one of the awards listed in subclauses 4.1(a) to (e) of the *Enclosed Waters Award*. It is a vessel operating at sea on activities not covered by any of the awards listed in the exclusion part of clause 4.1 of the *Enclosed Waters Award* so clause 4.5(a) of the *Seagoing Industry Award 2010* applies.
9. It follows that the employer is not covered by the proposed *Seagoing Industry Award 2010*.

Step 3 Is the employer covered by the *Ports, Harbours and Enclosed Water Vessels Award 2010*?

10. Yes. As noted above, the vessel is operating at sea on activities not covered by any of the awards listed in clause 4.1 of the Enclosed Waters Award, and as such is a vessel within the *ports, harbours and enclosed water vessels industry*. The Enclosed Waters Award will cover those employed as a Master, Mate, General Purpose Hand (or one of the other classifications in cl 13 of the Enclosed Waters Award).

Step 4: Does any exclusion provision of the *Ports, Harbours and Enclosed Water Vessels Award 2010* apply?

11. Yes. It is a vessel trading as a cargo vessel which in the course of such trade proceeds to sea (on a voyage outside the limits of bays, harbours or rivers). Those employed as a Master, Mate, Integrated Rating (or one of the other classifications in cl 13 of the Seagoing Award) are, therefore excluded from the Enclosed Waters Award by the proposed clause 4.2(a) of the Enclosed Waters Award.
12. It follows that the employer is not covered by the Enclosed Waters Award either.
13. The vice is found in the use of the words “*as described in clause 4.1*” when crafting the exclusion in 4.5(a) of the proposed Seagoing Award. We propose that the circular interaction of these two modern awards is resolved by amending the proposed Enclosed Waters Award as set out in schedule A to these submissions.

CONCLUSION

14. It is respectfully submitted the Full Bench ought to make the draft determination for the *Marine Towing Award 2010* and the *Seagoing Industry Award 2010*. In relation to the *Ports, Harbours and Enclosed Water Vessels Award 2010* the Full Bench ought to make the draft determination set out in schedule A of these submissions.

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February 2018

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards

(AM2016/5)

PORTS, HARBOURS AND ENCLOSED WATER VESSELS AWARD 2010

[MA000052]

Port authorities

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT GOOLEY
COMMISSIONER CAMBRIDGE

SYDNEY, XX MONTH 2018

4 yearly review of modern awards – Ports, Harbours and Enclosed Water Vessels Award 2010 – coverage of award

A. Further to the Full Bench Decision [[2017] FWCFB 1138] issued on 24 February 2017, the above award is varied as follows:

1. By deleting clause 4.1(b).
2. By renumbering clauses 4.1(c) to (g) as clauses 4.1(b) to (f).
3. By inserting the word “and” at the end of renumbered clause 4.1(d).
4. By deleting renumbered clause 4.1(e).
5. By renumbering the renumbered clause 4.1(f) as clause 4.1(e).
- ~~6. By renumbering clauses 4.2 to 4.8 as clause 4.3 to 4.9~~
7. By inserting ~~a new clause 4.2 as follows~~ at the end of clause 4.1 the following:
~~4.2~~—This award does not cover employees engaged in the operation of:
 - (a) vessels trading as cargo vessels, passenger vessels or operated as Research vessels which, in the course of such trade or operation, proceed to sea (on voyages outside the limits of bays, harbours or rivers) and who are employed in the classifications in clause 13 and clause 25 of the Seagoing Industry Award 2010.
 - (b) vessels engaged in operations as described in clause 4.3(b) of the Marine Towage Award 2010.
8. By updating cross-references accordingly. B. This determination comes into operation from XX Month 2018. In accordance with s.165(3) of the Fair Work Act 2009 this determination does not take effect until the start of the first full pay period that starts on or after XX Month 2018.

VICE PRESIDENT