

IN THE FAIR WORK COMMISSION

Matter No.: AM2016/5
Re: Modern Award Review: Ports, Harbours and Enclosed Water Vessels Award 2010, Seagoing Industry Award 2010, Marine Towing Award 2010

Submissions of Sealink Travel Group

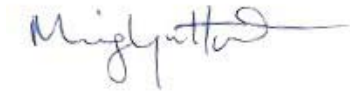
1. These submissions are made in response to the Statement of the Full Bench of the Fair Work Commission ([2018] FWCFB 504), calling for submissions on three revised draft determinations.
2. Sealink Travel Group (“**STG**”) agrees with the conclusions in the Submissions filed by the Maritime Union of Australia (“**MUA**”) in relation to this matter (February 2018) in that the construction of the draft determinations will leave some employers and employees award free, which is inconsistent with section 163(1) of the *Fair Work Act 2009* (Cth).
3. STG submits that item 7 of the draft determination for the *Ports, Harbours and Enclosed Water Vessels Award 2010* is not required to achieve its intended purpose.
4. To use the MUA’s example, in relation a dry cargo vessel of up to 10,000 tonnes:
 - 4.1. The vessel is a vessel as defined in clause 3.1 of the *Seagoing Industry Award 2010*, and falls within 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.
 - 4.2. The proposed 4.5(a) of the draft *Seagoing Industry Award 2010* does not operate such as to exclude the coverage of the *Ports, Harbours and Enclosed Water Vessels Award 2010*.
 - 4.3. Therefore, the employer is covered by both the *Seagoing Industry Award 2010* and the *Ports, Harbours and Enclosed Water Vessels Award 2010*.
 - 4.4. Clause 4.5 and 4.9 4 of the *Seagoing Industry Award 2010* and the *Ports, Harbours and Enclosed Water Vessels Award 2010* respectively state 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 by the employee and to the environment in which the employee normally performs the work.’
 - 4.5. The nature of the employer’s particular operation will be indicative of ‘the environment in which the employee normally performs the work,’ which will naturally lend itself to the operation of either the *Seagoing Industry Award 2010* and the *Ports, Harbours and Enclosed Water Vessels Award 2010*.
 - 4.6. The terms and conditions provided by both awards are quite different, in particular the provisions for hours of work.
 - 4.7. Therefore, the nature of the type of operation (and therefore the environment in which the employee normally performs the work) is likely to befit the terms and conditions of one award more than the other.
 - 4.8. The employee(s) therefore will appropriately be classified under the award which terms and conditions (eg the hours of work) are more appropriate to the environment in which the employee normally performs the work.
5. This will give effect to the Full Bench decision ([2017] FWCFB 1138) that the appropriate award safety net will apply to each different type maritime operation where an employer conducts different types of

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maritime operations, without having the unintended consequence of leaving employers and employees award-free.

6. In the alternative, STG submits that the wording of the MUA submission is such that goes to support what STG submits was an unintended consequence of the original drafting of the *Seagoing Industry Award 2010*, which has the effect of inappropriately applying to STG's ferry operations between Cape Jervis and Penneshaw.
7. This body of water is called the 'back-stairs passage' and it is a strait (or passage) within Australian coastline boundaries, and employees undertaking this voyage operate from a port and return to the port and their homes each day.
8. The definition of the 'ports, harbours and enclosed water vessels industry' should be amended to reflect this type of ferry operation, such that it includes the operation of vessels of any type wholly or substantially within a port, harbour, straight or passage, or other body of water within the Australian coastline or at sea on activities not covered by the awards which are specifically excluded.

Signed:

A handwritten signature in blue ink, appearing to read 'Ming-Lyn Hii', with a long horizontal flourish extending to the right.

Ming-Lyn Hii
EMA Consulting
Representative for Sealink Travel Group