

18 July 2018

Award Modernisation Team  
Fair Work Commission  
80 William Street  
East Sydney NSW 2011

Dear AMOD,

**AM2014/76 – 4 yearly review of modern awards – Marine Tourism and Charter Vessels Award and  
AM2017/51 – 4 yearly review of modern awards – Overtime for casuals**

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We note that in the decision of 28 June 2018<sup>1</sup> dealing with a number of outstanding technical and drafting issues, the Full Bench commented on the Australian Workers' Union proposed amendment to clause 6.4(d)(iv) of the Exposure Draft for the *Marine Tourism and Charter Vessels Award 2010* ('the Award')<sup>2</sup>. That proposal concerns casual non-overnight charter employees and is contained in the AWU submissions made 24 November 2015 at paragraph 11. At [210] of its 28 June decision, the Full Bench states that 'no other party has commented on the AWU's proposed wording.'

We wish to draw to the Award Modernisation Team's attention that AFEI commented upon this proposal in its correspondence of 29 March 2018 (**copy attached**). AFEI expressed the position that AWU proposals to amend the Exposure Draft in relation to overtime for casual employees were substantive issues. AFEI has made similar comment reiterating this point in its recent submissions filed 16 July 2018.<sup>3</sup> Further, the correspondence foreshadowed AFEI's intention to make submissions about the AWU proposal (as well as an MUA proposed variation) in matter AM2017/51 – being proceedings before a Full Bench specifically for the purpose of dealing with the issue of overtime for casuals.

Therefore, it is AFEI's understanding that:

- The Full Bench in AM2014/76 does not intend to deal further with the AWU's proposal<sup>4</sup>; and
- The AWU and MUA proposals will be amongst the issues considered at a future time before the Full Bench in AM2017/51 (overtime for casuals); and
- Directions will issue in the future for a timetable for the case management of AM2017/51, and which will provide an opportunity for interested parties to present their respective submissions.

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<sup>1</sup> [2018] FWCFB 3802

<sup>2</sup> at [201] – [213] of that decision

<sup>3</sup> Submissions filed also on behalf of the Commercial Vessels Division of the Boating Industry Association, in response to the Commission's invitation to provide submissions in relation to the AWU's proposal to amend the exposure draft terms concerning casual overnight charter employees.

<sup>4</sup> Outlined at [209] in [2018] FWCFB 3802

AFEI and the Commercial Vessels Division of the Boating Industry Association (on whose behalf this correspondence is also made) are parties interested in the proceedings in AM2017/51. Both intend to participate in those proceedings and to make submissions including considered responses to the AWU and MUA proposals.

However, if the Full Bench in AM2014/76 intends to deal further with the AWU's proposal, then AFEI and the Commercial Vessels Division of the Boating Industry Association respectfully request that directions issue allowing for further submissions from interested parties.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Paula Thomson', is enclosed in a light grey rectangular box.

Paula Thomson  
Per Tony Doyle  
Director, Workplace Relations

cc Boating Industry Association – Commercial Vessels Division

29 March 2018

Award Modernisation Team  
Fair Work Commission  
80 William Street  
East Sydney NSW 2011

Dear AMOD,

**AM2014/76 – 4 yearly review of modern awards – Marine Tourism and Charter Vessels Award and  
AM2017/51 – 4 yearly review of modern awards – overtime for casuals**

We refer to the *Exposure Draft – Marine Tourism and Charter Vessels Award 2015 – further amended* published 13 June 2017 (**the Exposure Draft**), the Statement issued by the President dated 21 March 2018 and the *Summary of submissions – outstanding issues – revised* published 22 March 2018 (**the Summary**) in the above matter AM2014/76.

The first three matters in the Summary, noted as outstanding, are concerned with proposals by the Australian Workers Union (**AWU**) to amend the Exposure Draft in relation to overtime for casual employees. These three matters, in our view, are substantive issues.

We note further, however, that similar matters have been referred for consideration by a Full Bench in the overtime for casuals common matter. In its Statement dated 4 December 2017, the Full Bench in matter AM2017/51 identified the *Marine Tourism and Charter Vessels Award 2010* (**the Award**) as one in which it is 'unclear when overtime commences'. In response to this Statement the Maritime Union of Australia (**MUA**) filed a Draft Determination seeking to vary the Award which, if adopted, would result in similar substantive changes to the Award to those proposed by the AWU.

In the circumstances it appears that the changes proposed by the AWU in relation to the Exposure Draft and the MUA's proposed variation to the Award are both substantive changes dealing with the same matters. It is AFEI's intention to make submissions to the Full Bench about the proposed substantive variations in AM2017/51 at the time the Full Bench makes available for that purpose.

We request that a copy of this correspondence be included in both matters.

Yours faithfully,



Tony Doyle  
Director, Workplace Relations