

Associate to Vice President Hatcher

Fair Work Commission

amod@fwc.gov.au  
06/07/2017  
SEA-01-045

RE: *AM2016/5*

Dear Associate to Vice President Hatcher

We refer to the above matter and advise that we act for Sea Swift Pty Ltd.

In relation to the Draft Determinations issued on 30 June 2017, our client submits:

**Marine Towage Award 2010**

Our client does not oppose the Draft Determination.

**Ports, Harbours and Enclosed Water Vessels Award 2010**

Our client is concerned that the Draft Determination appears to contain an error in clause 4.2(a) as the exclusion refers to “vessels” as defined in clause 3.1 will extend further than intended. The only free-standing definition of “vessels” in clause 3.1 of the Seagoing Industry Award captures all vessels used in navigation other than air navigation, which is a far wider exclusion than was sought or decided.

A more suitable reference would be to the definition of “vessels” as defined in the definition of “Seagoing Industry” in clause 3.1 of The Seagoing Industry Award

Our client also disagrees with the Draft Determination on the basis that clause 4.2(b) excludes only vessels described by clause 4.3(b) of the Marine Towage Award. The failure of the clause to also exclude clause 4.3(a) of the Marine Towage Award may a result in competing award coverage between this award and the Marine Towage Award which the Full Bench decision aimed to remove.



We respectfully submit that clause 4.2 be amended to read (with proposed changes underlined):

4.2 *The award does not cover employees engaged in the operation of:*

- (a) *Vessels as defined in the definition of 'seagoing industry' in clause 3.1 of the Seagoing Industry Award 2010 and who are employed in the classifications in clause 13 and 25 of that award; and*
- (b) *vessels engaged in operations as described in clause 4.3~~(b)~~ of the Marine Towage Award 2010.*

**Seagoing Industry Award 2010**

Our client disagrees with the Draft Determination on the basis that:

- (a) clause 4.5(a) references “vessels as described in clause 4.1 of the PHEWV Award”, whereas a more succinct and accurate description of the vessels in question appears in the definition of the “PHEWV industry” in that award; and
- (b) clause 4.5(b) excludes only vessels described by clause 4.3(b) of the Marine Towage Award, which may set up the conflicts referred to above.

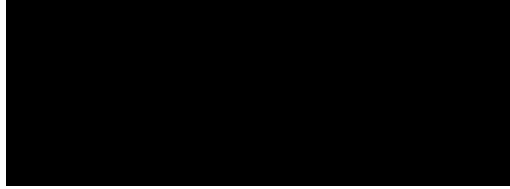
We respectfully submit that to avoid possible confusion clause 4.5 be amended to read:

*“4.5 This award does not cover the operation of:*

- (a) *Vessels as defined in the definition of 'ports, harbours and enclosed water vessels industry' in clause 4.1 of the PHEWV Award; and*
- (b) *Vessels engaged in operations as described in clause 4.3~~(b)~~ of the Marine Towage Award 2010”.*

We attach draft determinations reflecting these proposed amendments.

Sincerely



Ben Cooper  
**Associate Director**



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards**

(AM2016/5)

## **MARINE TOWAGE AWARD 2010**

[MA000050]

Port authorities

VICE PRESIDENT HATHCHER  
DEPUTY PRESIDENT GOOLEY  
COMMISSIONER CAMBRIDGE

SYDNEY, XX MONTH 2017

*Four yearly review of modern awards – Marine Towage 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 inserting the word “and” at the end of clause 4.1(a).
2. By deleting clause 4.1(b).
3. By renumbering clause 4.1(c) as 4.1(b).
4. By deleting the word “; and” and inserting a full stop in renumbered clause 4.1(b).
5. By deleting clause 4.1(d).
6. By updating cross-references accordingly.

B. This determination comes into operation from XX Month 2017. 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 2017.

VICE PRESIDENT

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# DRAFT DETERMINATION

*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 2017

*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:

7. By deleting clause 4.1(b).
8. By renumbering clauses 4.1(c) to 4.1(g) as 4.1(b) to 4.1(f).
9. By renumbering clauses 4.2 to 4.8 as 4.3 to 4.9.
10. By inserting a new clause 4.2 as follows:

**4.2** The award does not cover employees engaged in the operation of:

- (a) Vessels as defined in the definition of 'seagoing industry' in clause 3.1 of the *Seagoing Industry Award 2010* and who are employed in the classifications in clause 13 and 25 of that award; and
- (b) vessels engaged in operations as described in clause 4.3~~(b)~~ of the *Marine Towing Award 2010*.

5. By updating cross-references accordingly.

B. This determination comes into operation from XX Month 2017. 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 2017.

VICE PRESIDENT

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# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## 4 yearly review of modern awards

(AM2016/5)

## SEAGOING INDUSTRY AWARD 2010

[MA000122]

Port authorities

VICE PRESIDENT HATCHER  
DEPUTY PRESIDENT GOOLEY  
COMMISSIONER CAMBRIDGE

SYDNEY, XX MONTH 2017

*Four yearly review of modern awards – Seagoing Industry Award 2010 – Coverage of Award – Changes to classifications.*

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 the words “*Navigation Act 1912*” in clause 2.1 and inserting the words “*Navigation Act 2012*” wherever it appears.
2. By inserting the following definition in clause 3.1 in alphabetical order:  
  
**Electrician** means a person with a trade certificate as Electrical fitter (or equivalent) but who does not hold an Electro-technical officer certificate
3. By deleting clause 4.4(d)(iii).
4. By renumbering clauses 4.4(d)(iv) to 4.4(d)(vii) as 4.4(d)(iii) to 4.4(vi).
5. By deleting renumbered clause 4.4(v).
6. By renumbering clauses 4.4(v)(i) and 4.5 as clauses 4.4(v) and 4.6 respectively.
7. By inserting a new clause 4.5 as follows:

**4.5** This award does not cover the operation of:

Vessels as defined in the definition of ‘ports, harbours and enclosed water vessels industry’ in clause 3.1 of the PHEWV Award; and

(a) Vessels engaged in operations as described in clause 4.3~~(b)~~ of the *Marine Towage Award 2010*".

8 By inserting the words "Electro-technical officer" after the words "Second mate/Second engineer" in the table in clause 13.1(a).

9. By inserting the word "Electrician" after the words "Third mate/Third engineer" in the table in clause 13.1(a).

11. By inserting the words "Electro-technical officer" after the words "Second mate/Second engineer" in the table in clause 13.1(b).

12. By inserting the word "Electrician" after the words "Third mate/Third engineer" in the table in clause 13.1(b).

13. By inserting the words "Electro-technical officer" after the words "Second mate/Second engineer" in the table in clause 13.1(c).

14. By inserting the word "Electrician" after the words "Third mate/Third engineer" in the table in clause 13.1(c).

15. By inserting the words "Electro-technical officer" after the words "Second mate/Second engineer" in the table in clause 13.1(d).

16. By inserting the word "Electrician" after the words "Third mate/Third engineer" in the table in clause 13.1(d).

17. By inserting the words "Electro-technical officer" after the words "Second mate/Second engineer" in the table in clause 13.1(e).

18. By inserting the word "Electrician" after the words "Third mate/Third engineer" in the table in clause 13.1(e).

19. By inserting the words "Electro-technical officer" after the words "Second mate/Second engineer" in the table in clause 13.1(f).

20. By inserting the word "Electrician" after the words "Third mate/Third engineer" in the table in clause 13.1(f).

21. By inserting the words "Electro-technical officer" after the words "Second mate/Second engineer" in the table in clause 13.1(g).

22. By inserting the word "Electrician" after the words "Third mate/Third engineer" in the table in clause 13.1(g).

23. By deleting the words "*Navigation Act 1912*" in clause 13.2 and inserting the words "*Navigation Act 2012*".



23. By deleting the words “*Navigation Act 1912*” in clause 14.6(b) and inserting the words “*Navigation Act 2012*”.

24. By deleting the words “*Navigation Act 1912*” in clause 14.8(a)(ii) and inserting the words “*Navigation Act 2012*”.

25. By deleting the words “*Navigation Act 1912*” in clause 14.10 and inserting the words “*Navigation Act 2012*”.

26. By deleting the words “*Navigation Act 1912*” in clause 18.5(a)(iii) and inserting the words “*Navigation Act 2012*”.

27. By deleting the words “*Navigation Act 1912*” in clause 22.2 and inserting the words “*Navigation Act 2012*”.

28. By updating cross-references accordingly.

B. This determination comes into operation from XX Month 2017. 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 2017.

VICE PRESIDENT

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