



5 May 2016

Associate to Justice Ross
Fair Work Commission
11 Exhibition St
Melbourne VIC 3000

Email: amod@fwc.gov.au

Dear Associate to Justice Ross,

Re: AM2014/243 Seagoing Industry Award - Technical and Drafting Issues

We refer to the amended timetable outlined in a statement issued by President Ross on 23 March 2016 relating to submissions on technical and drafting issues in published Group 3 Award exposure drafts.

Maritime Industry Australia Ltd (MIAL) represents employers of employees performing work in the maritime industry covered by the Seagoing Industry Award (SIA).

On 14 April 2016 MIAL wrote to the Commission in response to the exposure drafts issued for the SIA. MIAL's response to the submissions made by other parties in relation to the exposure draft, and questions highlighted within them, is set out below.

1. Clause 7.2 and 14.2(e)

Comments made by parties including the Maritime Union of Australia (MUA) reveal that there is no operative difficulty with clause 7.2 and 14.2(e). MIAL has no additional comments.

2. Clause 9

In its submission, the MUA indicated that all breaks are paid in that employees are paid an aggregate wage. MIAL's correspondence dated 14 April 2014 identified that the aggregate wage in clause 10.3 had been fixed taking into account all aspects and conditions of employment and it was therefore unnecessary to specify whether breaks were paid or unpaid. MIAL considers no amendment to this clause required.

3. Clause 9.3

The MUA has outlined the requirements in *Marine Order 28 (Operations standards and procedures) 2015* which is made under the *Navigation Act 2012*, currently reflected in the SIA. This implements Australia's obligations under the International Maritime Organization's convention *Standards of Training Certification and Watchkeeping for Seafarers* and the International Labour Organization's *Maritime Labour Convention*. MIAL agrees that the legislative provision and the SIA should be consistent. Another approach may be to directly reference the provisions on the legislative provisions under this clause to ensure they are always identical.

Clause 8.5 Minimum hours of rest

Minimum hours of rest will be in accordance with Marine Order 28 (operations standards and procedures) 2015 (as amended).

MIAL also agrees with the observations by Australian Industry Group in relation to the *Navigation Act 2012* and the definition of a seafarer.

4. Clause 10.3

MIAL considers that clause 10.3 should be retained.

5. Clause 12.9(b)

MIAL is not aware of the term trappings being used in the industry. MIAL has no specific comments in response to the MUA's proposed definition.

6. Clause 14.2

MIAL does not consider that this clause requires amendment and submits that it should be retained. The clause serves to demonstrate the different arrangements that apply in the Seagoing Industry.

7. Proposed A.3.1 of Schedule A.

MIAL does not agree with the submission of the MUA that the current clause is inconsistent with the NES. Further, the proposal by the MUA has the potential to create confusion with the schedule that currently exists in Part B of the SIA, which is based on a 40 hour week (as was discussed at length during the Modern Award Review 2012 proceedings relating to the SIA, conducted pursuant to Part 2 of Schedule 5 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

The effect of the proposal from the MUA would be that if in any one week hours of work exceeded 38, then these would be paid as overtime. Clause 27.2 clearly stated that hours worked in excess of 8 hours per day Monday to Friday shall be paid as overtime. The effect of this change would be a substantive amendment to the SIA, and not merely one that is drafting or technical in nature. MIAL supports the comments made by the Australian Industry Group in their correspondence dated 25 June 2015.

8. Proposed A.4.1

MIAL has previously provide a response that clause A.4.1 incorporates the NES entitlement to annual leave on 17 June 2015.

9. Schedule of hourly rates

MIAL notes the submissions made by the MUA and agree that there would be little utility for industry participants covered by the (current) Part A of the Award. Certainly for vessels covered by (current) Part B, in order to calculate overtime payments, employers have been required to break down the weekly wage contained in Part B. There would be utility for Part B of the Award to include a schedule of hourly rates, although MIAL suspects less so for Part A given the historical existence of annualised salaries in the Australian seagoing industry.

MIAL is are aware that there is currently some uncertainty about the coverage of the SIA and this matter is subject to Full Bench proceedings. MIAL reiterates its view that once those proceedings are settled, MIAL may be in a better position to assess whether the schedule would have utility based on the types of employers that are covered.

Yours sincerely,

A small, stylized handwritten signature in black ink, appearing to read 'Sarah Cerche'.

Sarah Cerche
Maritime Industry Australia Ltd