

Associate to Vice President Hatcher
Fair Work Commission
80 William Street
EAST SYDNEY NSW 2011

9 February 2018

Email: Chambers.hatcher.vp@fwc.gov.au

Dear Associate,

RE: AM2014/243 Four Yearly Review of Modern Awards – Seagoing Industry Award 2010 – Part B Vessels Granted a Temporary Licence - Alleged Inconsistencies with the NES

Maritime Industry Australia Ltd (MIAL) represents owners and operators of vessels granted temporary licenses under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

MIAL refers to the provisional decision of the Full Bench [2018] FWCFB 129 issued on 12 January 2018 in relation to Part B of the Seagoing Industry Award 2010 (SIA).

MIAL makes no further submissions in relation to the decision. MIAL provides the following submissions for consideration by the Full Bench in relation to the draft determination issued.

1. MIAL understands that the rates proposed in paragraph [1] of the draft determination give effect to the provisional conclusion reached at paragraph [24] of [2018] FWCFB 129. MIAL submits that given the conclusions reached by the Full Bench, this is necessary and appropriate to give effect to the modern award objectives, for the reasons set out in the Full Bench decision.
2. MIAL submits that paragraphs [2] and [3] of the draft determination as currently drafted have the potential to cause unnecessary confusion, due to the requirement to calculate .4 of one hour at an overtime rate for each day worked from Monday to Friday where eight (or more) hours are worked. This seems an unnecessary complication which MIAL suggest could be clarified simply through the following amendment to clause 27.1 (text underlined):

27.1 The ordinary hours of work will be eight hours per day from Monday to Friday.
Subject to 27.2, hours worked in excess of 38 from Monday to Friday inclusive in any week will be paid for as overtime.

27.2 All hours worked in excess of eight hours per day from Monday to Friday will be paid as overtime.

3. MIAL submits that the above suggested amendment gives effect to the provisional decision [2018] FWCFB 129 by ensuring that ordinary hours of work will be 38 hours per week. It would retain the existing provision that ordinary hours of work will be eight hours per day from Monday to Friday. The effect of this would be:
 - a. not more than 8 hours per day worked between Monday and Friday will be ordinary time; and
 - b. not more than 38 hours per week will be ordinary time. In the event that 8 hours are worked each day from a period Monday to Friday inclusive (for example 40 hours), the effect of the amendment will mean that the two additional hours worked will be paid as overtime.
4. The proposed amendment retains the current arrangements that ordinary hours of work are 8 hours a day Monday to Friday, subject to ordinary hours not exceeding 38 across the Monday to Friday period. MIAL does not consider that s 62 of the *Fair Work Act 2009* requires the same number of ordinary hours be worked on each day.
5. MIAL suggests this amendment on the basis that it would likely provide ease of calculation for those employers obligated to correctly calculate wages under Part B of the SIA. The Full Bench has received submissions from parties in relation to Part B of the SIA and its application in practice. Given that the wages provided under the SIA apply intermittently, it is MIAL's understanding that the calculation is often done on the basis of hours worked in any one day across a voyage being conducted under a temporary licence. Such voyages will vary in length depending on departure and destination points.
6. Where daily calculations occur, the proposed draft determination accompanying the decision would require, where 8 or more hours are worked in one weekday, a calculation of 0.6 of an hour be paid at ordinary time, and 0.4 of an hour be paid as overtime. Presumably the Fair Work Ombudsman would need to satisfy itself that this has occurred, through assessment of records.
7. The suggestion by MIAL is intended to alleviate the need to calculate different rates for parts of a single hour.
8. MIAL submits that the provisional view of the Full Bench can be given effect without this unnecessary administrative burden.

On behalf of Maritime Industry Australia Ltd