

FAIR WORK COMMISSION

Matter No: AM2016/5

Submissions in Reply by Maritime Industry Australia Limited

1. Maritime Industry Australia Ltd (MIAL), an industry peak body representing vessel owners, operators and employers across the maritime industry, files this submission in reply on behalf of members.
2. This submission is made pursuant to the Decision published by the Full Bench on 30 April 2019, namely [2019] FWCFB 2910, inviting interested parties to respond to the CFMMEU – MUA’s submission of 15 February 2018.
3. MIAL respectfully argues that the CFMMEU – MUA’s argument would not necessarily have the effect they suggest in leaving some employers and employees award free. Instead, the proposed clauses clarify when each award should apply.
4. The Commission’s draft determinations of 1 February 2018 operate to clarify that the Seagoing Industry Award 2010 (**Seagoing Award**) does not cover employees who are engaged in operation of specific vessels covered by the Ports, Harbours and Enclosed Water Vessels Award 2010 (**Ports Award**) and the Marine Towage Award 2010 (**Towage Award**), and within their classifications. This is in line with the Commission’s need to have regard to avoiding the overlap of awards and minimising the number of awards that may apply to a particular employee or employer; including provision of clear rules where there is any potential overlap in coverage.¹
5. The proposed clauses of the Commission’s draft determinations must be construed having regard to their context and purpose:²
 - a. If not covered by the Seagoing Award because of the proposed alteration, then there is no exclusion provision that operates to exclude the application of the other maritime awards;
 - b. Clauses 4.5 and 4.9 4 of the current Seagoing Award and the Ports Award 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.*”

¹ Ministerial request under s576C *Workplace Relations Act 1996* at [9], as referenced in Four yearly review of modern awards [2015] FWCFB 620 at [11].

² *United Voice v Gold Coast Kennels Discretionary Trust t/a AAA Pet Resort* [2018] FWCFB 128 at [36].

6. Unless classes of employees have not traditionally been covered by awards, the Commission has arguably demonstrated a preference for employees to be covered by a modern award rather than be award free. For example, in the recent decision of *United Voice v Gold Coast Kennels Discretionary Trust t/a AAA Pet Resort*,³ the Full Bench suggested that the purpose of the Miscellaneous Award 2010 is to provide minimum conditions of employment for a range of employers and employees not identified by reference to any industry, business function or occupation, who are not covered by another award.
7. In any event, Schedule A of the CFMMEU – MUA division’s submission merely adds the Commission’s proposed wording of a new clause 4.2 of the Ports Award to the end of clause 4.1, without there being a notable difference.
8. MIAL supports the Full Bench decision not to amalgamate the Seagoing Award, Ports Award and Towage Award and notes the decision by the Full Bench of 30 April 2019⁴ reflects concerns raised by MIAL and other interested parties at the hearing on 7 December 2017.
9. In conclusion and on behalf of its members, MIAL contends that the draft determinations proposed by the Commission on 1 February 2018 are appropriate.

Submitted on behalf of:



Maritime Industry Australia Limited
20 May 2019

³ *United Voice v Gold Coast Kennels Discretionary Trust t/a AAA Pet Resort* [2018] FWCFB 128 at [36].

⁴ 4 yearly review of modern awards - *Seagoing Industry Award 2010; Ports, Harbours and Enclosed Water Vessels Award 2010; Marine Towage Award 2010* [2019] FWCFB 2910.