

FAIR WORK COMMISSION

Matter No: AM2019/17

Submissions on behalf of Maritime Industry Australia Ltd

1. Maritime Industry Australia Ltd (**MIAL**), an industry peak body representing vessel owners, operators and employers across the maritime industry, files these submissions on behalf of its members, pursuant to the Full Bench decision regarding 4 yearly review of modern awards of 29 January 2020.¹
2. These submissions are in respect of the Seagoing Industry Award 2010 (**Seagoing Award**), Ports, Harbours and Enclosed Water Vessels Award 2010 (**Ports and Harbours Award**) and the Marine Towing Award 2010.

Ports and Harbours Award and Marine Towing Award

3. We note that there are a number of outstanding items in relation to these Awards which have not been reflected or amended in the published exposure drafts. These include:
 - a. Amendments to the coverage provisions pursuant to decision, [\[2019\] FWCFB 8721](#) (note, this also applies to the Seagoing Award);
 - b. The common matter relating to overtime for casuals (clauses 11 and Schedule A.3 and A.2 of these Awards) which was to be determined on the papers per the directions hearing attended by MIAL on 12 July 2019 and per decision, [\[2019\] FWC 7087](#) on 14 October 2019. This was also noted in the [statement and directions](#) issued on 6 December 2019. We do not believe a Full Bench decision was later issued to finalise this matter in respect of the Ports and Harbours Award and Towing Award;
 - c. Frequency of payment of wages at clause 15 of each Award; and
 - d. Rates that apply to shift-workers at clause 19 of each Award.
4. In the absence of finalisation of these matters, which may require consequential amendments, it is difficult to provide further feedback.
5. As to Schedule A of the Ports and Harbours Award, MIAL holds no particular view in relation to a separate table for overtime in the Schedule of hourly rates.

Seagoing Award

Part B

6. MIAL maintains that the section relating to vessels granted a temporary licence in the Seagoing Award should be retained as “Part B”, not “Schedule A” as proposed in the exposure draft.

¹ 4 yearly review of modern awards [\[2020\] FWCFB 421](#) (29 January 2020).

7. The intention of Part B is to ensure that international operators employing international crew operating temporarily in Australia comply with Australian standards. Artificially amending terminology will only result in confusion.
8. It is unclear how the proposed name change is necessary to meet the modern awards objective, which require consideration of the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden, as well as the need to ensure a simple, easy to understand, stable and sustainable modern award system.² MIAL believes the proposed name change has the potential to cause confusion and uncertainty for companies, which are usually based outside of Australia, who are obligated to apply it.
9. MIAL receives queries from international companies on the requirements around Part B. It is unnecessary and unwarranted to change terminology which has the very real potential to confuse operators who do not regularly engage in Australia's industrial relations system.
10. MIAL's position is that it is appropriate and desirable to retain the name, Part B.

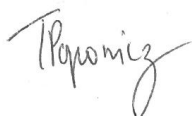
Temporary licence

11. MIAL maintains its position that the wording in the preamble under Part B of the Seagoing Award should be changed to reflect that a vessel *operates* under a temporary licence, rather than being "granted" one.
12. This is because the Minister grants an application for a temporary licence and that licence is granted to the person who applies for the temporary licence, being the owner, charterer, master or agent of the vessel, or a shipper, rather than the vessel itself.
13. Amending the Preamble to "operating" under a temporary licence would be more reflective of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and the practicalities of how temporary licenses operate and to whom they are granted.³

Hours of work

14. MIAL supports the provisional conclusions of the Full Bench in [\[2018\] FWCFB 129](#) in so far as if it is found necessary to describe a 38 hour working week in the Seagoing Award, then the current wage figures, which are reflective of a 40 hour working week, should consequentially be amended. MIAL acknowledges the position of the Commission that there is concern that the working week as currently expressed may cause confusion in relation to the national employment standards (NES). Accordingly, to effectively implement this decision in the Seagoing Award, the rates in the Award should be consequentially adjusted by a reduction of five percent, as noted in the decision.

Submitted on behalf of:



Maritime Industry Australia Ltd
4 March 2020

² Sections 134(1)(f) and 134(1)(g) of the *Fair Work Act 2009* (Cth).

³ See section 28, *Coastal Trading (Revitalising Australian Shipping) Act 2012*.