

Fair Work Commission

Fair Work Act 2009

s.156 4 yearly review of modern awards

AM 2016/5

Ports, Harbours and Enclosed Water Vessels Award 2010

Seagoing Industry Award 2010

Marine Towage Award 2010

Written Submissions in Reply

of

Australian Institute of Marine & Power Engineers

1. These submissions in reply are made on behalf of the Australian Institute of Marine & Power Engineers (“AIMPE”).
2. Relevantly these submissions are made in reply to the submissions made on behalf of *Seaswift Pty Ltd* (“*Seaswift*”).
3. AIMPE submits that the proposed determinations submitted by *Seaswift* should be rejected by the Full Bench.
4. AIMPE submits that the submissions of *Seaswift* are not relevant to the current 4 yearly review of modern awards.
5. AIMPE submits that the submissions of *Seaswift* and the evidence that they will present are matters that have been considered by the Commission in the matter *MUA & Ors v Sea Swift & Ors [2016] FWCFB 651*.
6. AIMPE submits that *Seaswift's* submissions and the evidence that they will present are largely the same submissions and evidence that was put in the original matter and in the appeal of that matter referred to above at point 5.
7. AIMPE submits that *Seaswift's* submissions in this matter merely demonstrate a preference for a different result rather than the Decision of the Full Bench in *MUA & Ors v Sea Swift & Ors [2016] FWCFB 651*.

8. AIMPE submits that paragraphs [28] and [29] of the *Seaswift* submission reflects dissatisfaction with the Full Bench decision and that *Seaswift* are using the 4 yearly review of modern awards as a mechanism to re-run the matters that were subject to appeal in *MUA & Ors v Sea Swift & Ors [2016]* FWCFB 651.
9. AIMPE submits that the Full Bench Decision *MUA & Ors v Sea Swift & Ors [2016]* FWCFB 651 has clarified the coverage and operation of these awards and that no change or variation to the Coverage provisions is required.
10. AIMPE submits that the proposed variations of *Seaswift* will only lead to greater confusion between the coverage of the Awards rather than resolving any anomalies or issues of overlapping of Awards.
11. AIMPE submits that in contrast to paragraph [29] of the *Seaswift* submission the Decision in *MUA & Ors v Sea Swift & Ors [2016]* FWCFB 651 has not revealed any anomalies, rather it has settled in plain English the proper construction of the Coverage of the various Maritime Awards.

Casuals

12. AIMPE submits that the proposal by *Seaswift* for the *Seagoing Industry Award* to include a classification of “casual employee” is not warranted or appropriate for this Award. The *Seagoing Industry Award* currently provides for “*Relief Employment*”. This is an industry appropriate form of short term employment. The proposition by *Seaswift* to provide for 3 hours minimum engagement is not practicable for the Award due to the Leave provisions. This is due to the fact that the normal voyaging patterns of vessels covered by the *Seagoing Industry Award* take place over extended periods necessarily at sea. Employees are not able to come and go from the workplace as they can come and go from a workplace ashore. The *Seaswift* proposal is for Casuals to *receive on a pro-rata basis equivalent pay and conditions to those of full-time employees*. AIMPE submits that such a classification would have unintended consequences for seagoing employees.
13. AIMPE further submits that nothing in the current *Seagoing Industry Award* prevents an Employer from utilising “relief employees” to overcome the operations identified in paragraph [46] of the *Seaswift* submission. The term “relief employee” should not be interpreted as *Seaswift* have of only being available to relieve a full- time employee, but rather to provide relief to operational circumstances as required which would include but not be limited to relieving a full-time employee.
14. AIMPE submits that the proposed Determination of *Seaswift* does not contain any form of casual loading and therefore the proposal is deficient.

Small Ships Schedule

15. AIMPE acknowledges that *Seaswift* have proposed the inclusion into the *Seagoing Industry Award* a schedule for Small Ships. AIMPE has also made a similar proposal. It is AIMPE's submission that the *Seaswift* proposal be rejected and that the AIMPE proposal be the preferred small ship schedule. The differences between the proposals are the tonnage and the proposed wages.
16. AIMPE submits that the premise for *Seaswift*'s proposal is not entirely accurate for Engineers. In contrast to the assertion made at paragraph [56] engineering qualifications are based on the propulsion power of a vessel rather than by reference to the size of the vessel. Engineering qualifications required for particular vessels are determined by regulations pursuant to the *Navigation Act 2012* or the *Marine Safety (Domestic Commercial Vessels) Act 2012*. AIMPE can provide further details if required.
17. AIMPE further submits that the assertion made by *Seaswift* in paragraph [59] in relation to passenger vessels and the *Ports, Harbours and Enclosed Water Vessels Award* is also incorrect. The *Seagoing Industry Award* relevantly applies to vessels of similar size to that operated by *Seaswift* performing similar functions. An appropriate example would be the *Sealink* ferries operating between Kangaroo Island and the mainland. Those vessels operate with passengers and cargo and also solely as cargo vessels.

Marine Towage Award

18. AIMPE submits that many of the submissions of *Seaswift* are made without merit and are misleading particularly in relation to the *Marine Towage Award*. The historical coverage of the Award in its various forms has not been disputed in that the coverage is in plain and simple terms. The *Marine Towage Award* provides for a similar leave ratio as the *Seagoing Industry Award*. Casuals in the *Marine Towage Award* receive a 25% loading to compensate for Leave.



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