



3 October 2016

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

Email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Associate to Justice Ross,

**Re: Seagoing Industry Award Drafting and Technical Issues**

We refer to the conference before Justice Ross on 4 August 2016 and subsequent correspondence sent on 21 September 2016 relating to agreement by Maritime Industry Australia Limited (MIAL) to seek further instructions on items 4 and 17 of the revised summary of submissions, regarding temporary licenses.

MIAL's position is as follows:

Clause 6 of Seagoing Industry Award Exposure Draft

1. MIAL has previously submitted (11 April 2016) that the wording of clause 6 in the Seagoing Industry Award exposure draft creates a potential for confusion.
2. Reading clause 6 in isolation, some operators may be unaware that they are only covered by the Fair Work Act and the Seagoing Industry Award 2010 (SIA) if their temporary license meets the definition in the Fair Work Regulations 2009 (FW Regulations) at 1.15B.
3. The definition in the FW Regulations has additional criteria to the definition of a temporary license set out in the Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth) (Coastal Trading Act). However, only the Coastal Trading Act is referenced in the SIA exposure draft. MIAL submits that this has the potential to cause confusion about the application of Part B of the SIA, rendering it broader than it presently is.
4. In its capacity as an industry body, MIAL has frequent dealings with foreign operators who are carrying domestic cargo and utilise temporary licenses under the Coastal Trading Act to do so. Although they may operate under a temporary license, such operators are not covered by Part B of the SIA until time timing and frequency requirements in the FW Regulations at 1.15B are met.

5. The definition at 6.1 of the exposure draft does not make this clear. It states:

*6. Effect of Temporary Licences*

*6.1 A temporary licence is a temporary licence granted under the Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth).*

*6.2 The provisions contained within Schedule A—Vessels Granted a Temporary Licence, apply exclusively to **vessels granted a temporary licence**.*

6. Clause 6 implies that any vessel granted a temporary license under the Coastal Trading Act is then covered by the Schedule A (presently Part B) of the SIA. This is not the case.

7. The FW Regulations at regulation 1.15B relevantly state that a temporary licensed ship means a ship:

*(a) that is used to undertake a voyage authorised by a temporary licence; and*

*(b) to which one of the following applies:*

*i. within 12 months before commencing the voyage, the ship commenced at least 2 other voyages authorised by a temporary licence...*

Proposed solution

8. MIAL considers that this potential confusion could be remedied by inserting a reference to 1.15B of the Fair Work Regulations in clause 6.

Consideration of Australian Maritime Offices Union v CSL Australia Pty Ltd. [2013] FWCFB 8338

9. MIAL does not consider that the decision on Australian Maritime Offices Union v CSL Australia Pty Ltd. [2013] FWCFB 8338 referenced by the Maritime Union of Australia has application. That decision related to an appeal where it was found that the Commissioner had erred in varying the award to resolve a perceived ambiguity in the FW Regulations, simultaneously narrowing the definition of a temporary license.

10. MIAL's position is related to confirming and referring to the existing definition in the FW Regulations. MIAL is not seeking to change or even to restate the definition, but merely to reference both the Coastal Trading Act and Regulations in section 6 of the SIA so that it is clear that is where the definition of temporary licensed ships that would be covered by the SIA is found.

Yours sincerely,

Isabelle Guaran

Industry Employee Relations Manager

**Maritime Industry Australia Limited**