

FAIR WORK COMMISSION

Fair Work Act 2009

AM2014/234

s.156 – 4 yearly review of modern awards

Seagoing Industry Award 2010

**SUBMISSIONS OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING &
ENERGY UNION – THE MARITIME UNION OF AUSTRALIA DIVISION**

Background

1. The submissions are made by the Construction, Forestry, Maritime, Mining and Energy Union – The Maritime Union of Australia Division (**MUA**) in response to the submissions filed on behalf of the Maritime Industry Australia Limited (**MIAL**) on 4 March 2020.

Clause 8 and Schedule A

2. MIAL in its submissions¹ confirms that it is pressing its claim that the conditions set by the Seagoing Industry Award 2010 (**Seagoing Award**) in relation to vessels granted a temporary licence should be in a section headed "Part B" rather than the proposed "Schedule A". The only basis for pressing this claim articulated in the assertion that there is a potential to cause confusion. No factual basis is provided in support of this assertion.
3. The MUA maintains its position that it is unaware of anyone who will be confused by the rearrangement of the Seagoing Award.² The change would not cause confusion for anyone who reads the entirety of the award to ensure they are complying with all their obligations. It is also relevant that Part B of the Seagoing Award does not contain the entirety of the obligations in relation to vessels granted a temporary licence. Other obligations are found in clauses 1-9 that appear before Part A.

¹ MIAL Submissions dated 4 March 2020 at [6] to [10].

² MUA Submissions dated 4 May 2016.

Preamble to Schedule A

4. MIAL in its submissions maintains its claim that the preamble to Schedule A be amended as follows

"The following provisions are to apply to vessels granted operating under a temporary licence under the *Coastal Trading (Revitalising Australian Shipping) Act 2012(Cth)*"

5. This claim is contrary to the determination of the Full Bench in *AMOU v CSL Australia Pty Limited; V Ships Australia Pty Limited* [2013] FWCFB 8338 that the wording of the Seagoing Award should not narrow the wording appearing in the *Fair Work Regulations 2009*.³

6. Section 33(3) of the Fair Work Act 2009 enables regulations to extend the Act. It provides:

Extensions prescribed by regulations

- (3) Without limiting subsection (1), if the regulations prescribe further extensions of this Act, or specified provisions of this Act, to or in relation to the exclusive economic zone or to the waters above the continental shelf, then this Act extends accordingly.

7. Regulation 1.15E provides:

1.15E Extension of Act to the exclusive economic zone and the continental shelf—ships

- (1) For subsection 33(3) of the Act, the Act is extended to and in relation to each of the following ships in the exclusive economic zone or the waters above the continental shelf:
- (a) an emergency licensed ship;
 - (b) a general licensed ship;
 - (c) a temporary licensed ship;
 - (d) a transitional general licensed ship.
- (2) For subsection 33(3) of the Act, the Act is extended to and in relation to a majority Australian-crewed ship in the exclusive economic zone or the waters above the continental shelf.

Note: The extension of this Act to emergency licensed ships, general licensed ships, temporary licensed ships, transitional general licensed ships and majority Australian-crewed ships in the exclusive economic zone and the waters above the continental shelf (including provisions relating to compliance and enforcement, administration and right of entry by reason of the extension of the rest of the Act, so far as it relates to the specified provisions) is subject to:

- (a) Australia's international obligations relating to foreign ships; and
- (b) the concurrent jurisdiction of a foreign State.

8. The term "temporary licensed ship" is defined in regulation 1.15B as:

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:

³ At [28].

- (i) within 12 months before commencing the voyage, the ship commenced at least 2 other voyages authorised by a temporary licence;
 - (ii) within 12 months before commencing the voyage:
 - (A) the ship commenced at least one other voyage authorised by a temporary licence; and
 - (B) was issued with a single voyage permit;
 - (iii) within 12 months before commencing the voyage, the ship was issued with at least 2 single voyage permits;
 - (iv) within 15 months before commencing the voyage, the ship was issued with a continuous voyage permit.
9. The use of the words "operating under a temporary" are narrower than the words of the *Fair Work Regulations 2009* and should not be adopted. The Commission should not be giving the wording of the *Fair Work Regulations 2009* that adopts one of the possible interpretations available.
10. The amendments sought by MIAL are opposed by the MUA.

Dated: 7 April 2020

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