



Associate to Vice President Hatcher  
Fair Work Commission  
80 William Street  
EAST SYDNEY NSW 2011

2 February 2018

Email: [Chambers.hatcher.vp@fwc.gov.au](mailto:Chambers.hatcher.vp@fwc.gov.au)

Dear Associate,

**RE: AM 2014/196 & 197 4 Yearly Review of Modern Awards – Casual and Part Time Employment - Marine Towage Award 2010 (MA000050)**

Maritime Industry Australia Ltd (MIAL) is an industry peak body whose members include employers of employees engaged in the marine towage industry in Australia.

MIAL refers to submissions made by solicitors acting on behalf of the Maritime Union of Australia (MUA) dated 24 January 2018 in relation to the above matter. It appears that the MUA is seeking a variation to the Marine Towage Award 2010 for minimum casual engagement period of 1 day. This proposed variation is outside of the terms of a previous Full Bench decision [2017] FWCFB 3541 in relation to AM 2014/196 and AM 2014/ 197. MIAL opposes the variation sought by the MUA outlined in those submissions.

After the hearing of extensive submissions and evidence from interested parties, the Full Bench by decision [2017] FWCFB 3541 formed the provisional view that the insertion of a minimum period of engagement for casual employees met the modern awards objective in relation to a number of modern awards, including the Marine Towage Award 2010.

The Full Bench invited further submissions on the position that modern awards which did not contain a daily minimum engagement period for casual employees should be varied to include a two hour daily minimum engagement period for casual employees.

As far as MIAL is aware:

1. The provisional view expressed in decision [2017] FWCFB 3541 was formed based on the material available to the Full Bench during the substantive hearing of common issues in relation to part time and casual employment.
2. At the time of that decision, directions were issued such that "Any further written submissions which any interested party wishes to make concerning the provisional view of the Full Bench to include a 2 hour daily minimum engagement period for casual employees in modern awards which currently do not contain a daily

minimum engagement period for casual employees shall be filed on or before **2 August 2017.**" [at para 902].

3. A number of interested parties filed further submissions in response to the Directions. There were no submissions received in relation to the Marine Towage Award 2010 in response to the Directions issued by the Full Bench.
4. The Statement issued by the Full Bench [2017] FWCFB 6776 on 22 December 2017 invited parties to file submissions regarding the provision view in paragraph [8] and the form of the variations in paragraph [9] above. Paragraph [8] does not relate to the Marine Towage Award 2010 and paragraph [9] contains links to draft determinations which give effect to the two hour minimum engagement period and the facilitative provision with a minimum "floor" of a three hour minimum engagement period.
5. The submission from the MUA lodged on 24 January 2018 goes to the substance of an issue decided and not the form of the variation giving effect to that decision. The submissions now put by the MUA do not appear to have been made during the substantive proceedings when there was ample opportunity to do so.
6. There is no cogent reason to now disturb the findings of the Full Bench in relation to minimum casual engagement provisions in awards not containing a minimum period of engagement [at para 408 [2017] FWCFB 3541].

MIAL notes that the Marine Towage Award 2010 currently contemplates the calculation of casual rates of pay on the basis of an hourly payment at clause 13.3(a).

MIAL has no objection to the proposed draft determination issued by the Commission on 22 December 2017 giving effect to its decision [2017] FWCFB 3541.



**On behalf of Maritime Industry Australia Limited**