

Vice President Watson  
Fair Work Commission  
e: chambers.watson.vp@fwc.gov.au;  
amod@fwc.gov.au,  
Date 24/03/2016  
Our Ref: SEA-00-30\00358037.DOCX

Re: *AM2016/5-substantive issues in Ports, Harbours and Enclosed Water Vessels of Modern Awards 2010 and Seagoing Industry Award 2010 - 4 Yearly Review*

Dear Vice President,

Livingstones acts as agent for Sea Swift Pty Ltd which is a company with substantial commercial marine operations in far North Queensland, Torres Strait and the Northern Territory.

Sea Swift has a direct interest in the matter of the coverage clauses of a number of the 3C Maritime Awards which have yesterday<sup>1</sup> been allocated by the President to a Full Bench for determination of substantive issues. Sea Swift only became fully aware of the full extent of those issues upon the handing down of a Full Bench appeal decision<sup>2</sup> of 6 February, 2016 which dealt with the appropriate award to be applied for the determination of the BOOT test in relation to an application by Sea Swift for approval of an enterprise agreement (AG2015/2789).

Upon considering the implications of that decision, it appears that the terms of the *Seagoing Industry Award 2010* will be applied to substantial parts of

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<sup>1</sup> [2016] FWC1838

<sup>2</sup> [2016] FWCFB651



the Sea Swift operations which, if conducted as a stand-alone operation by a separate employer, would be covered by an entirely different award (such as the *Marine Towing Award 2010* and/or the *Ports Harbours etc Award 2010*).

We are instructed that the Sea Swift business is perhaps unique in the whole of Australia, in that its business encompasses marine operations which are, of themselves, the subject matter of at least 3 different awards, and that it appears to have been the case that the Award Modernisation Full Bench may not have been fully informed as to the existence of such an enterprise at the time that the Modern Awards were made.

Accordingly, Sea Swift now seeks an opportunity to adduce some brief evidence and to make submissions to the Full Bench as to proposed amendments to the coverage provisions of a number of the Modern Maritime Awards, to avoid anomalies which it will contend now arise from the “wholly or substantially” effect of existing coverage clauses and award exclusions, when applied to a genuinely hybrid enterprise which operates across a number of different marine “industries” as described in the Awards.

Identification of a BOOT award that is both correct *and* appropriate to the circumstances of existing enterprises is a live issue between Sea Swift and the union parties at this point in time as proceedings for the approval of the extant agreement by Commissioner Simpson have stalled, and negotiations for any replacement agreement if that application is unsuccessful are unlikely to proceed until the issues which Sea Swift seeks to raise have been addressed.

We would appreciate the cooperation of the Commission by noting our interest in the matter and including the agent for Sea Swift in any FWC

communications in relation to this particular matter and the relevant 3C Awards. To the extent that it is necessary, this letter is to be taken to also comprise an application to extend any times that may have passed for the lodging of documents and submissions in this matter. Our client will of course comply with any directions by the 3C Award Full Bench once they are made.

Should the Commission have any questions relating to this correspondence please don't hesitate to contact the undersigned.

Yours Faithfully,

A handwritten signature in black ink, appearing to read "Laurie Moloney". The signature is written in a cursive, flowing style with a large, prominent loop at the end.

Laurie Moloney  
Director, Livingstones  
Agent for Sea Swift Pty Ltd.