

29 June 2016

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

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

Dear Associate,

**4 yearly review of modern awards - Common Issue – Annual Leave and Maritime Industry Modern Awards (AM2014/47)**

The Australian Mines and Metals Association (AMMA) and Maritime Industry Australia Ltd (MIAL) write in relation to the notice of listing issued on 20 June 2016 in relation to a hearing for 1 July 2016. AMMA/MIAL have previously provided two joint written submissions (17 July 2015 and 26 October 2015) in relation the insertion of model terms relating to excessive leave, annual leave in advance and cashing out of annual leave in the following maritime industry modern awards:

- Dredging Industry Award 2010
- Marine Towage Award 2010
- Maritime Offshore Oil and Gas Award 2010;
- Ports, Harbours and Enclosed Water Vessels Award 2010;
- Professional Diving Industry (Industrial) Award 2010;
- Seagoing Industry Award 2010

The Full Bench published a statement ([2015] FWCFB 8408) on 4 December 2015 adopting AMMA/MIAL's position not to insert the model terms in the six maritime industry modern awards as follows:

[5] The AWU did not oppose the submissions advanced by AMMA and the MIA. In the November Statement we expressed our provisional view that the draft determinations inserting annual leave provisions dealing with excessive leave, leave in advance and cashing out will not be issued in relation to these six awards. Any interested persons objecting to our provisional view was invited to file a written submission no later than 4.00 pm on Thursday 3 December 2015. We also stated that if no submissions are made to the contrary we would adopt AMMA/MIA's position.

[6] No submissions were received in relation to this issue. Accordingly, at this time we do not propose to vary the six modern awards set out at paragraph [4]



above in respect of the model terms referred to earlier. Any interested party may seek to vary one or more of these modern awards during the 4 yearly review to include these model terms. We will deal with any such application should it be made.

We note that no application has been made to insert the model terms. Despite no application being made, the Full Bench in its decision of 23 May 2016 ([2016] FWCFB 3177) has indicated that it will now "give further consideration to whether these awards should be varied to insert these revised model terms" (at [238]) and has listed the matter for hearing on 1 July 2016.

AMMA/MIAL requests that the Fair Work Commission (FWC) adjourn the hearing which is scheduled for 1 July and instead list the matter before a member of the Full Bench for a conference. The request is made against the following circumstances. A conference before a member of the Full Bench will greatly assist the parties and the FWC consider the revised model clauses in relation to the six maritime industry modern awards, the historical background of the existing leave clauses and how the current provisions operate in practice. It also appears that a number of interested parties and their representatives are not available to attend the hearing on 1 July due to the school holiday period and other commitments.

At the time of writing, the following interested parties consent to AMMA/MIAL's proposal to request the FWC adjourn the hearing of 1 July and re-list the matter for a conference before a member of the Full Bench:

- AiG (Brent Ferguson)
- AWU (Roushan Walsh)
- AMOU (John Wydell)
- AIMPE (Michael Bakhaazi)
- MUA (Michael Burns, W.G. McNally Jones Staff)
- CSL (Kerryn Tredwell, Hall & Wilcox)

In the event that the matter remains listed for hearing on 1 July, AMMA/MIAL requests a video-link to the Perth registry in order to appear in the matter. AMMA/MIAL will not be filing additional materials and will rely upon its earlier written submissions filed in relation to this matter and supplement these with oral submissions.

Yours sincerely,



**DANIEL MAMMONE**  
Director – Government Relations