

FAIR WORK ACT 2009

Section 156 – FOUR YEARLY REVIEW OF MODERN AWARDS

AM2016/5 – Substantive Issues in:

Ports, Harbours and Enclosed Water Vessels Award 2010

Seagoing Industry Award 2010

Marine Towing Award 2010

FURTHER SUBMISSIONS FOR THE MARITIME UNION OF AUSTRALIA IN RESPONSE TO THE STATEMENT OF THE PRESIDENT [2017] FWC 2189

Background

1. On 24 February 2017 a properly constituted Full Bench issued a decision in relation to this matter.
2. Prior to the Full Bench issuing any order or determination one member of the Full Bench resigned.

Outline of Submissions

3. Section 622 of the FW Act is engaged when a member of a Full Bench “becomes unavailable to continue dealing with a matter before the matter is completely dealt with.”
4. This matter has not been completely dealt with in that no order or determination has been issued.
5. It is also clear that as Watson VP is no longer a FWC member that a member of a Full Bench is no longer available to continue to deal with the matter.
6. Section 622(3) stipulates that in these circumstances the President “must direct another FWC Member to form part of the Full Bench.” After that direction has been issued the reconstituted Full Bench “may continue to deal with the matter without the unavailable member.”

7. Section 623 further requires that the new member of the Full Bench “must take into account everything that occurred before the FWC, and everything that the FWC did, in relation to the matter before the FWC member began to deal with the matter.”

Applying these submissions to this matter

8. The taking of any further step in this matter requires the President to direct that another FWC Member form part of the Full Bench.
9. Having regard to the advanced status of this matter it would be appropriate for the newly appointed member of the Full Bench to exercise their discretion to refrain from issuing their own decision. The reconstituted Full Bench should then determine how it wishes to proceed in relation to the remaining issues in the matter.

Dated: 4 May 2017



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Nathan Keats

Solicitor for the Maritime Union of Australia