



# AIMPE

## TUG INDUSTRY REPORT

# TO FEDERAL COUNCIL

June 2023

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## OVERVIEW

The year continued as it finished 2022 with multiple disputes escalating with Smit Lamnalco and Svitzer.

Due to the length of this report, this summary is brief as focus should take place on the detail and efforts of AIMPE Organisers to ensure members professional and industrial interests protected.

As at the time of writing thee towage Agreements appear finalised: Smit Gladstone (albeit a simple roll over), the Smit Lamnalco National Agreement and the Svitzer Darwin Agreement. Victoria Branch finalised the Portland Tugs and Tasport Tugs Agreements. The Svitzer National Agreement access period should commence just before if not during this Federal Council.

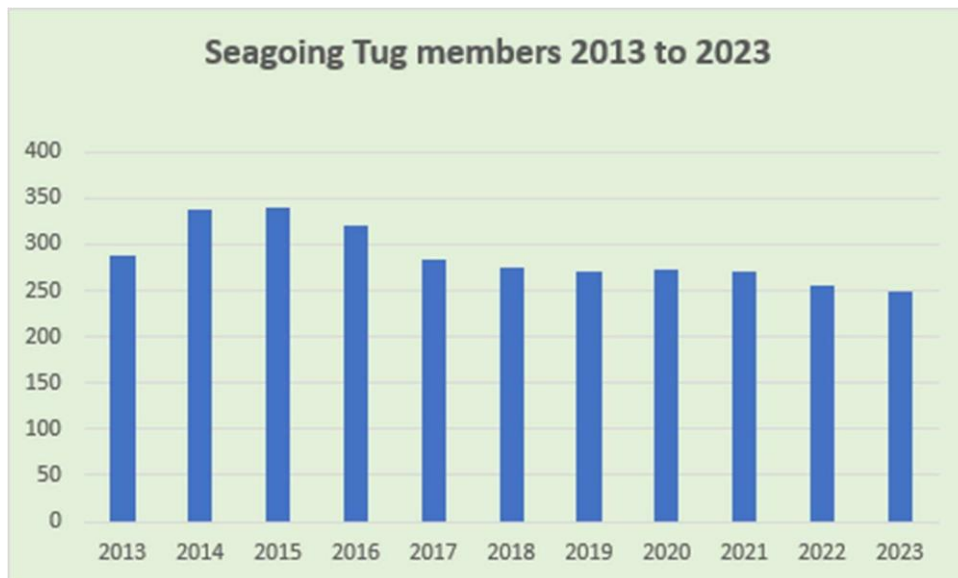
Outstanding Agreements remain for Engage operations including the north west operations, Port Latta, Whyalla transshipment, Geelong and Sydney. Cape Flattery has new tugs and scoping work is yet to be carried out. Pacific Tug continue in Eden and Bundaberg (servicing Port Alma).

Due to workload of the WA staff, those ports have received limited support.

The new year will continue to be a high workload and anticipated high numbers of disputes.

## MEMBERSHIP PROFILE:

Membership since 2013 has taken the following pattern:



(Source: AIMPE Data base)

During the Svitzer and Smit EA renegotiation tasks membership audits have not been priority. As those negotiations come to an end, port audits will be undertaken to ensure membership is best at 100% (less one expelled member). This will require visits to, at least, Whyalla (Engage), Geelong (Engage, SWS), Bunbury (Svitzer), Pluto Tugs (Svitzer), Bundaberg (Pacific Tug) and other ports as necessary.

The finalisation of the agreement plus the undertakings to consult on new ports (or previous ports) by Svitzer and Smit (actually in the EA) are positive recruitment tools so that the non-members can clearly see that the union will be working for them in the (hopefully) near future.

Otherwise, membership numbers remain stable, however, that does not account for the mapping for a saturation percentage.

### NATIONAL TUG COMMITTEE

The National Tug Committee has not had a national meeting since November 2014.

The Committee's Convenor is Peter Toohey. Whilst Peter Toohey has retired off the tugs, he continues in his role as Convenor and Queensland Branch Secretary.

A Tug Conference of Queensland Delegates was proposed for July/August 2021 however the pandemic intervened with programming and other sector priorities took precedence. It would be advantageous to review the possibility of a National Conference at a convenient time (adjacent to a Svitzer Works Council?) in the near future. More time away from Svitzer disputes will assist in working on a more effective communication model that does not compromise confidentiality.

### OVERVIEW OF PORT STATISTICS

No port statistics have been sourced for this report.

### REGULATION

National Law, Engineer Duties and Training (including new entrants):

Following the excellent efforts of the Director of Professional Standards the new Marine Order MO505 commenced from 1 January 2023. The enhancements have assisted with the towage operator negotiations over the role and responsibilities of the Chief Engineer on a tug in the absence of any positive statements in the previous version.

*chief engineer* means the engineer in charge of:

- (a) the vessel's propulsion machinery; and
- (b) the safe operation and maintenance of the mechanical and electrical installation of the vessel; and
- (c) ensuring that watchkeeping arrangements are adequate to maintain a safe engineering watch.

**engineering capacity** means performing tasks related to the operation of propulsion and auxiliary machinery of a vessel.

**engineering certificate** means any of the following certificates of competency:

- (a) Marine Engine Driver Grade 3 NC;
- (b) Marine Engine Driver Grade 2 NC;
- (c) Marine Engine Driver Grade 1 NC;
- (d) Engineer Class 3 NC.

**engine work** means tasks relating to main or auxiliary machinery used for any of the following:

- (a) propulsion;
- (b) mooring;
- (c) anchoring;
- (d) cargo.

**second engineer** means the engineer next in rank to the chief engineer and upon whom the responsibilities of the chief engineer will fall in the event of the chief engineer's incapacity.

The amendments to Workshop Skills Equivalent Qualification removed reference to Boilermaker and the trade list appears as follows. In relation to amendments to EAs, the Svitzer National, Svitzer Darwin, and Engage Bowen agreements reference this list where an MEC3 candidate presents for a position without a fitter, diesel fitter or electrical fitter qualification.

**workshop skills equivalent qualification** means any of the following:

- (a) Certificate III in Engineering/mechanical trade;
- (b) Certificate III in Electrical fitting;
- (c) Certificate III in Automotive diesel engine technology;
- (d) Certificate III in Automotive/mechanical — diesel fitter;
- (e) Certificate III in Automotive/mechanical — heavy vehicle road transport;
- (f) Certificate III in Automotive/mechanical — heavy vehicle mobile equipment, plant/earthmoving/agriculture;
- (g) Certificate III in Automotive engine reconditioning;
- (h) Certificate IV in ESI generation maintenance — electrical electronics;
- (i) Certificate IV in ESI generation maintenance — mechanical;
- (j) an Australian trade certificate in fitter and turner/machinist;
- (k) an Australian trade certificate in diesel fitter;
- (l) an Australian trade certificate in electrical fitter;
- (m) an Australian Recognised Trade Certificate in the same classification as an Australian trade certificate mentioned in this definition;
- (n) any other qualification that includes workshop skills and is approved in writing by the National Regulator.

*Note for paragraph (m)* Australian Recognised Trade Certificates are issued in recognition of trade certificates or other qualifications of a country other than Australia.

### Training:

The recognition of trades (MO505 RoT) under state, National Law and National Standards for Commercial vessels serves a different purpose than the requirement under Navigation Act Marine Order 72. The MO505 RoT serves the purpose of reducing seetime to obtain a MEC3 to 120 days and not necessarily a recognition of competence for exemptions from the Diploma. Under MO72 the RoT serves to determine whether an aspiring Engineer has recognised competence for exemptions or RPL for a traineeship versus a cadetship requiring workshop time served and signed off. The distinction allows for an RoT MEC3 trainee to acquire a CoC far quicker than obtaining a Watchkeeper's certificate.

In the last report the following was recommended:

On the back of the amendments, the AIMPE should, without delay, take advantage of the opportunity to approach the tug companies to have two new entrant schemes:

- 1 to fast-track supply of MEC3 Engineers and
- 2 to target school leavers and diversity standards which form part of port contracts particularly those with indigenous land use agreements governing the area in the port operates.

In 2022, following the Smit Lamnalco objecting formally opposing its own agreement due to the trade requirement for MEC3, the Federal Secretary and Tug Industry portfolio holder had a meeting with their Industrial Relation Manager. The forgoing was outlined and the objective of tug companies having safe maintainers and operators was the Institute's priority, not to control labour. Smit Lamnalco subsequently sought and engaged 4 trade qualified persons and engaged them on a fast track MEC3 training program. All of the Engineers in Training had some form of previous maritime experience, either ashore workshop or MED qualified. Two are qualified and working for Smit and Engage Marine (Bowen) and have joined or are joining. The only issue that has been highlighted with the training program is compliant sea time (as highlighted by the Director of Professional Standards in the March 2023 On Watch).

MO505 [2023] changed the sea time requirements for Engineers in MED1 and MEC3 where by the Engineer in Training needs to be a 1<sup>st</sup> Engineer or an assistant/supernumerary working with an Engineer – not simply working on deck accumulating sea time for throwing ropes. Indeed in 1994 the Institute stopped dead the MUA “notional” sea time proposal and required effective tutelage under qualified Engineers. However, there are some that have exploited a loophole with sea time accumulated before the new MO505 which resulted in a GPH with no substantive sea time in an engineering role onboard a vessel to have it recognised for an MEC3. In addition, somehow, without any direct employment in a trade, the same individual acquired a fast-tracked trade listed in MO505. There are holes in the system, and this MEC3 was recently flagged to be a casual on tugs where he works a GPH – despite the recruitment clause, AIMPE cannot stop this misleading conduct. A dispute was raised and Vice President Asbury in conference indicated that the recruitment process was not based on “merit, qualifications and experience” and no ongoing Engineer position could be given unless the full competitive selection process was conducted. In addition, the Company has to provide the trade qualifications to the Institute. A good outcome for the EA and embarrassment for the company.

AIMPE needs to continue the campaign for EWK cadets and MEC3 Engineers in Training during 2023/24.

### WORKERS COMPENSATION AND SAFETY LEGISLATION

Tugs continue with State based legislation covering workplace health and safety and workers compensation systems.

A workers compensation claim was rejected for a member in Weipa who was within their 5 week roster and required during that period to turn to “meet the company customer requirements” within 60 minutes. The member was FiFo and staying at a Rio Tinto camp and decided, as encouraged by the employer, to exercise by going for a short walk. The member was injured during the walk and the workers compensation claim rejected on the basis the employer stated the worker was on a day off and not performing work, despite being on call on a towage only day and engaging in a healthy activity encouraged by the employer. An application of Review of the decision has been made and which should be determined within 25 days.

It should be noted that the Full Court of the Supreme Court of Tasmania made a decision that a worker injured whilst being on call and walking his dog that the injury was compensable. The Decision relied on various Decisions from the Federal jurisdiction and should be at least persuasive in this matter. If the reviewer of the Decision of the tug worker be upheld, it will be recommended that an appeal be made via the Queensland system (i.e. via the QIRC).

Another decision relating to a tourist vessel worker death in the hotel room on the day he was to join a vessel in Darwin rejected the claim. The matter is now being handled by the family who has engaged Ben Holt from Bridge Brideaux lawyers in Brisbane.

Peter Toohey’s expression of interest to be appointed to the (un-remunerated) Committee Qld WHS Industry Standing Committee for the transport and storage sector has not yet been decided.

### ASBESTOS

There have been no reports of further asbestos being found on tugs.

### HARBOUR TOWAGE LICENCES AND CONTRACTS

The main areas of towage license/contracts during 2022/23 have been:

Gladstone: In May 2023 the Institute was advised that the option to extend the Gladstone contract with Smit Lamnalco has been granted to the end of 2026.

Port of Townsville Ltd and Ports North: Townsville, Cairns, Mourilyan, Lucinda: This license will be up for tender again in the next 12 months and pending the agreement negotiations outcome, tumult is expected. The ACCC issued a monopoly authorisation for Ports North and POTL to have all or a mix of ports under tender. No indications have been given that the anticipated tender process will seek those options.

Pulto Tugs: Svitzer have won the contract for the tugs and a greenfields EA is being negotiated.

Bunbury: Svitzer are currently negotiating the Bunbury contract with, according to reports, crews directly. It is suggested that AIMPE get involved to represent members at that Port.

### PARTNERSHIPS and COOPERATIVES

No further expansion of partnership ports have emerged during 2022/23, however, the question of “co-operatives” (Engage Marine) where the “employees” own a share in the operation poses a different conundrum of suffocating potential conflict between crews and operators: as the crews will have “skin in the game”.

It should be noted that Engineers (and other crew) are starting to reenter the employee ports outside of the partnerships. One report was received that a partner had to pay \$26K for his own relief recently.

The employee avoidance schemes should be condemned and Institute industrial strategy clearly aimed at maintaining employee arrangements.

### TUG AGREEMENTS AND NEGOTIATIONS

The industrial tumult caused mainly by Svitzer has been the main headline during 2022/23. While the focus has been on Svitzer and Smit Lamnalco, these and other operators have adopted an aggressive bargaining model claiming conditions that undermine the towage agreements.

The following are the transactions for 2022/23

#### - SVITZER AUSTRALIA

National Towage EA: It is best to follow a chronology throughout the year to describe the intensity of the challenges of the termination of the EA application and negotiations for a new EA.

By Federal Council in June 2022, negotiations hit a stalemate following the private conciliation sessions with North West Shelf Arbitrator, Brian Lacy. A draft EA proposing disparate conditions between Fulltime, Parttime and casual employees was proposed with no recall provisions that reflected the value of work. The Institute advised the proposal to be deficient and the workforce would not support it.

The parties then decided to bunker down and prepare for the EA termination hearing originally scheduled for the week of 12 August 2022.

At the Council it was outlined that Sam Littlewood, Nathan Niven and Greg Yates would organise the witness material to support the FWC to not terminate the national EA. The relevant provision of the Act was simple in that the Fair Work Commission must take into account the views of employees (as well as the employer and Unions). Given each port has distinct and unique operating parameters, it was relevant for the FWC to know the impact on each port if it decided to terminate the EA.

Already, Svitzer had filed some 3,500 pages of witness and evidence.

Consequently, a goal was initiated to obtain for four (4) witness statements from each port plus relevant Union officials. This was the only credible method of demonstrating the views of employees. This was carried out in house without solicitors/Barristers/Counsel involved in the ground work.

A majority of material was vetted, honed and made to conform by Sam Littlewood in excellent work and attention to detail.

AIMPE eventually filed near 30 witness statements. Whilst the other unions were informed of the Institute's activity, the AMOU provided less than 8 witnesses, but included an expert economist and the MUA around the same figure.

Collectively the unions' material was around 40-44 witnesses and the material filed late June 2023.

In a reaction from Svitzer lawyers, Svitzer complained, then proceeded to file response material and statements from an additional 5 witnesses. The complaint could have been characterised of having the tone that the Unions had no right to respond – which has been the general tone by Svitzer in settling the Agreement.

In the end there is a total of around some 55 witnesses.

This was all in the consideration of Institute tactics – to effectively rebut the Svitzer hyperbole, and drown out the spurious inexperience and baseless allegations in their material. This commenced the process of ensuring that the process of a fair hearing would put the “pillow over the head” of the application.

On 5 August 2022 the first (and arguably historic) virtual meeting of all Svitzer crews (all departments) was held. There was a 4hour stoppage programmed so that all crews could participate in the forum. There was a resolution to fight the Termination application, continue protected action (strategically) and reject the proposed reductions in conditions – that is, not expose the Unions to having the PIA Orders terminated.

Also, notably, acknowledgement by the forum that this was probably the first EA where all unions coordinated.

Following receipt of the material, Vice President Easton called an urgent hearing about the proceedings in the week prior to 12 August 2023. The Vice President flagged that the whilst the application needed to be dealt with, the time allocated was insufficient to properly hear all material. Despite protest from Svitzer the hearing dates were abandoned.

During the proceedings, the Vice President advised the Acting President's concern over the application and that the Parties should reengage and focus on obtaining agreement – not engage in litigation.

The Parties were advised that Commissioner Riordan was allocated the file and instead of the proceedings to terminate the agreement the available dates be used to progress negotiations. The hearing dates were abandoned and reprogrammed for mid December 2022 and March 2023.

During August and September, 13 days of assisted bargaining took place with Cr Riordan. During this period the Lead Svitzer IR was on extended leave and some progress was made. On 20 September, following a lack of cooperation by Svitzer, the Commissioner withdrew assistance with the statement that both parties should continue with an open mind to finalise an EA as the alternative of an arbitrated outcome would not be a good result for either the workers or the company.



A further eight meetings took place whereby a draft EA was given to the Unions in early October that reinstated recall provisions and same work same pay principle between 100%, PPT and casuals. It looked as if progress would be close to finalisation.

In late October the Lead Svitzer IR resumed participation in the discussions and another EA was provided that reneged on most if not all progress. This infuriated the Union delegates and Unions. Negotiations ceased and the membership endorsed further industrial action. This was coordinated and programmed for early November 2023 and notice given accordingly.

During this period the AIMPE and other unions were consulted by DEWR senior advisors about the problems with Svitzer and the termination application. This was following significant lobbying efforts to close the opportunity for the whimsical IR strategy of termination EAs as leverage in negotiations.

On 14 November 2022, Svitzer advised that it intended to lockout its crews from midday [AEDT] Friday 18 November 2022. It became apparent that Svitzer did not have any contingency plans in place.

The Fair Work Commission intervened on the basis that the lockout was a threat to the national economy and safety. The Unions again coordinated and decided to withdraw all PIA Notices.

A hearing took place of the Full Bench on 16 November 2022 where the Acting President posed questions to the parties that on the basis that the lockout would harm the economy, should the Fair Work Commission terminate the lockout along with all protected action Orders.

In the interim, numerous press reports were circulated based on Svitzer propaganda that gave examples of alleged Union control and bullying in ports. These reports were simply not true. Brisbane Delegate, Terry Ayres was targeted in being characterised as the “Don” or “Consigliere” of whether work would take place in Brisbane or not. Truly a shameful tactic by the company.

A Full Bench Hearing on the VP’s question took place on 17 November, where AIMPE were represented by Barrister Oshir Fagir. Given the public interest, there was some 10 Barristers and counsel including representation of the Minister.

Only a short period of time was available to review witness material. Svitzer put forward their East coast Danish import Deniz Kidar-Tru as their main witness. Greg Yates was AIMPE’s only witness but was not require for cross examination. Mr Fagir was briefed in that short time as Ms Kidar had only been in Australia for a 2 years, never dealt with Australian Unions, Enterprise bargaining and only really experienced the Australian towage market from a desktop in Copenhagen.

Svitzer Counsel were asked whether the lockout should be suspended or terminated and responded that it should be terminated. The consequence of termination was immediate direction to a workplace determination (an arbitrated agreement), whereas, suspension would allow all protected action order to stand and allow the parties to conciliate or bargain.

The response from the Unions was for suspension. Whilst the other unions’ Counsel gave good and sound submissions, Mr Fagir in cross examination revealed facts that questioned

the credit of Svitzer. Mr Fagir concluded submission that the action should be suspended so that Svitzer bad conduct in the true motivation of an arbitrated agreement and confecting a means of achieving that should not be rewarded.

The Full Bench concurred and all protected action was suspended to May 2023 and directed the Parties to reconvene negotiations before Cr Riordan. This commenced almost immediately.

In the meantime, legislation was in being developed in Parliament about new EA termination provisions and to reduce the opportunity for whimsical termination applications aimed at only reducing conditions. The Minister and Parliament supporting significant changes to legislation was a key to thwart Svitzer's strategy.

A further 5 bargaining sessions took place during December and on the last day of Parliament for 2023, the bill to stop termination applications was passed and given Royal Assent. All December dates to hear the termination application were vacated.

Svitzer filed an amended application under the new legislation on 21 December 2023 and new directions issued. Dates for hearing were programmed for 15 days in May 2023 with directions for the exchange of witness and other material.

In the new year a further 20 Days of negotiations took place with progress being made in a more pragmatic approach. By this time the total page count of material for the termination case was in the order of 10,000 pages.

In March 2023, the MUA protested at the Maersk AGM about Svitzer's bargaining.

In April 2023 the ITF held another Global Tug Network meeting where Svitzer's activities were discussed.

Following the final service of material, and persuasion from various sources, Svitzer advised that it no longer was pursuing its application to terminate the Agreement. The proceedings were discontinued and further bargaining sessions were conducted before Cr Riordan.

On 11 May 2023 these sessions concluded with the "last best" position from all unions and Svitzer which has resulted in a draft EA. Concluding corrections and final principles over following weeks has produced a draft that members will be asked to ballot.

The major features of the changes (which is more important than the wages) are:

- No change or variation between the aggregate effect of hour full-time, part time and casuals are paid.
- Changes in recall: for dockings, lay-ups and outside (200% in cash or 1 day cash+1 day leave); Harbour towage: 200% cash or 1 day in lieu;
- Overdue maintenance: where maintenance is behind a consultation process will take place and crew may be required to attend outside hours to bring it up to date
  - without additional pay (note: at the moment planned and operational maintenance outside hours is discretionary and does not attract additional payment). This is controversial in LIR ports or towage only roster slots where tugs may be left unmanned.
- Expedited changes to POPs process. Crew can dispute changes or failure to address change, but not initiate changes to POPs.

- Clean up of Engineer duties in context with MO505. Note the changes made in 2013 were in response to the DCV legislation. MO505 2023 makes those changes redundant to a large degree.
- Changes to Engineer agreed quals (see following);
- Restriction on when fixed term contracts can be used.
- Revalidation restricted to Certificates held on engagement (including COST) but excluding tanker endorsements etc.
- Changes to Redundancy selection: last on (within 2 years) first off. Otherwise the existing EOI process.
- Redundancy cap of 70 weeks (an equivalent to a true 35 weeks aggregate pay) – previously uncapped.
- Order of Pick for relief changes to ensure PPT's can be reasonably unavailable.
- Removal of references to ports where Svitzer no longer operates and replaced with a letter of undertaking to consult with the Unions on new ports.
- Reduction in GPH manning for outside work.
- Delegates Rights: Svitzer have agreed with parameters to list forums where delegates attending POPs, meetings and disputes during leave are entitled to have their day back. There are strict limitations.

The term will be to expire 4 years from the date of approval. There will be a sign on bonus of \$2,500 and 5 wage increases during the term as follows:

- 5% backdated to 1 April 2023
- 1 January 2024: CPI capped at 5% and floor of 2%
- 1 January 2025: CPI capped at 4% and floor of 2%
- 1 January 2026: CPI capped at 4% and floor of 2%
- 1 January 2027: CPI capped at 4% and floor of 2%

The wage increases represent an opportunity of between 13% and 22% during the life of the Agreement.

A final ballot copy will be provided to the Council when received.

In summary: this is a far better outcome than where negotiations recommenced in August 2020 or the rejected 92% rejected 2021 Agreement or an arbitrated outcome.

Thanks to all the Delegates and members for their support and encouragement during a dark period in the towage sector.

Engineer Qualifications: The following is the final settled arrangements for Engineer recruitment that the Federal Council need to review:

### *Engineers*

- (i) *Svitzer agrees to engage Engineer Employees who possess either class 1, class 2, or class 3 Certificates of Competency as required to meet the needs of the business.*
  - *In the case of the holder of a class 3 Certificate of Competency, that person will also hold a trade qualification as either a fitter and turner, diesel fitter, electrical fitter or other relevant or equivalent engineering trade. (refer to MO505 for expanded list of trades).*

- *An Engineer Candidate, who possesses a Class 3 Certificate without the above trade qualification, must have previous documented sea service of at least 364 days engaged as a chief engineer in charge of a vessel with multiple propulsion machinery with at least one propulsion engine power of >1,500KW.*
  - *For Engineer recruitment in ports where there are no suitable Engineer candidates that meet the above agreed minimum qualifications, before interviews are scheduled, Svitzer will contact the AIMPE for assistance to attract a broader pool of Engineer candidates, including discussing and agreeing the candidacy of an Engineer Class 3 applicant without the above trade qualifications or experience. The AIMPE Tug Convenor will be consulted in the assessment of the Engineer Class 3 under this subclause. Consultation is subject to privacy laws in the recruitment process. Agreement between the parties about Engineer candidacy under this subclause shall not be unreasonably withheld.*
  - *The Traineeship will be structured so as to enable a Trainee to meet at least the minimum certification requirement of Class 3 with a relevant trade qualification.*
- (ii) *Demonstrated personal attributes of teamwork, communication, problem solving, suitability and ability to meet the requirements of the position;*

As a final comment – these are lots of words and it is not anticipated they will be trouble free.

Disputes: There are ongoing disputes despite the above as follows:

- Port Bonython Captive Standby Dispute: AIMPE lodged a dispute in the Fair Work Commission against Svitzer, for a matter arising in Port Bonython, South Australia, regarding Svitzer's new work servicing the Santos terminal. AIMPE wrote to Svitzer in late December 2022 in relation to their obligation to confer with the Unions in relation to new work. Svitzer had picked up work servicing the Santos terminal at Port Bonython. As this is new work then Clause 13 – Reduction, Cessation or Growth in Business, is applicable and in particular Clause 13.2 required Svitzer to confer with the Unions in an attempt to resolve any issues arising from the change in circumstances. Svitzer agreed to meet with the Unions about the arrangements in late December, but no agreement was reached regarding the performance of this work. Further discussions revolved around the Nominated Voyage Allowance and a Standby Allowance was proposed to cover the time spent at Port Bonython. The Unions and Svitzer were not been able to agree on the quantum of the Standby Allowance or the rest breaks prior to and following the trips. AIMPE therefore applied to the FWC for the Commission to determine the reasonableness of the proposals in accordance with Clause 13.2 of the Enterprise Agreement. The AMOU and MUA joined the proceedings as interested parties under the EA. The matter was listed before Deputy Easton. At the first Conference Svitzer really upped the ante at the start by declaring that all their offers were off the table because we had not agreed to their offer. Further they also disputed whether the work was new work under the EA as it doesn't add to Tug jobs so in their submission it didn't contribute towards 'growth of work'. Naturally we reverted to the position that the entire work is a nominated voyage as the EA doesn't provide any standby allowances. Svitzer submitted that under the EA they could send a crew to Port Bonython for the nominated

voyage and no other payments, as long as the hours of rest are observed. They submitted that there is no difference between resting on the Tug or at home. As leave in running crews they need to be available for 12hours work within a 24-hour day and that there is no reason why the rest period can't be on the Tug. The debate turned to whether the crews are therefore captive and why doesn't the overtime rates apply after 14 hours on the Tug. Svitzer just denied the crews are captive and therefore the overtime payments would not apply. The Deputy President asked Svitzer if you can get off the Tug and go home, of course Svitzer said no but that they had access to great fishing! In the end Svitzer just want to save face, because "it doesn't matter what we offer, it is never enough for the Unions!". Eventually the matter was settled via a written letter from the Svitzer Managing Director, but not before arguments were had surrounding the text of that letter being in acceptable terms.

- Svitzer –Fixed Term Contract Dispute: The Svitzer Fixed Term Contract that originated in April 2022, after long time Svitzer Engineer and AIMPE Delegate Ken Tivendale announced his retirement, evolved into a much larger matter when Svitzer enacted the same policy, filling Permanent Full-Time positions with Fixed Term employees on 12-month contracts, at other Ports around Australia. Sydney, Newcastle, Brisbane and Melbourne all had the same issues across different departments. The Disputes lodged by AIMPE and the MUA were joined and the AMOU participated as a party under the Enterprise Agreement. AIMPE and the MUA in the original disputes sought those Permanent Full-Time positions be replaced by Permanent Full Time Employees, in accordance with the respective POPs. Interestingly the lawyers for Svitzer submitted that a Fixed Term employee is a permanent employee and then later submitted that they were also temporary employees. They also submitted that the evidence of their own witnesses should carry no weight after we argued that their Witness evidence supported our construction that Fixed Term Contracts are used to fill temporary vacancies when Permanent Employees are on an extended absence such as Long Service Leave or a workplace injury. We await the Decision of Deputy President Easton. The Decision of Deputy President Easton was a mixed Decision and therefore disappointing. The Deputy President determined that fixed term employment is a sub-category of permanent employment. The Deputy President determined that unless the POPs specifically stipulate a restriction on the use of fixed term contracts, then Svitzer is free to engage employees on fixed term contracts in permanent positions. The Brisbane and Melbourne POPs do specifically restrict fixed term contracts in place of permanent full-time positions, so Svitzer are restricted from doing so in those Ports. However, in Sydney, Newcastle, and Westernport Deputy President Easton ruled that Svitzer is free to engage fixed-term contract Employees in the place of permanent full-time positions. AIMPE sought advice from Legal Counsel on the Decision and the merits of an Appeal. Based on that advice AIMPE decided to appeal the Decision, based on the Deputy Presidents interpretations being difficult to accept in particular the notion that a fixed term employee is "permanent". The AMOU joined our appeal, and we jointly funded Counsel for the Hearing. The MUA also appealed and Svitzer appealed, basing their appeal on the matters that can be contained in the POPs and that they should have an unfettered right to fill the roster with any category of employment that is contained within the Enterprise Agreement. At the Full Bench Appeal Hearing Svitzer argued the proposition that they have the right to employ people as they deem fit within the categories in the EA and that therefore employing people under Fixed Term employment arrangements is within their discretion. Further they argued that the EA does not fetter this right in any way. The EA does not permit the POPs to determine the categories of employment within the rosters. The existing POPs are operating to essentially water down the discretionary rights that Svitzer have and that makes the POPs inconsistent with the EA and therefore they have no effect. The Unions argued that the EA enables the POPs to contain Rosters and to properly design the roster and give effect to the EA Clause that provides for

Permanent Employees to be the main source of crewing the Ports and to enable other clauses to operate such as the Order of Pick then the Rosters need to identify the employment categories. Further to this it was argued that Fixed Term Employment is not a form of Permanent Employment as one form has an implicit expectation of ongoing employment while the other has a definite time limit or end date associated with it. The Full Bench has reserved their Decision.

- Svitzer: Newcastle: AIMPE notified a dispute in Newcastle which resulted in Fair Work Commission conference before Deputy President Saunders in December 2022 regarding a Newcastle POPs dispute with Svitzer over arrangements for backfilling crews. Svitzer made the decision to re-interpret the Newcastle POPs by by-passing the order of pick and immediately rolling forward last available crews in certain circumstances. Svitzer maintained a position that they will only comply with the order of pick when “Svitzer determines it is required to do so for shipping”. This re-interpretation of the Newcastle POPs coincided with the company’s hard line during negotiations for the EBA regarding removal of the order of pick entirely from the industrial instrument.

The conference resulted in a recommendation being issued by Deputy President Saunders that Svitzer would communicate to its Employees what circumstances it would seek to by-pass the order of pick.

While there were some obvious, practical examples provided in the recommendation that AIMPE agrees with, there was by no means agreement from the AIMPE on complete implementation of all of those recommendations without first undergoing consultation regarding POPs changes with all Employee representatives present. This was communicated to Svitzer and the Deputy President during the conference prior to the written recommendation being issued.

Svitzer took the recommendation as a green light from the Commission to implement its preferred interpretation of the POPs, again without consultation at a local level with all Employee representative Delegates regarding how the POPs is to operate in the Port. After discussions with representatives of the AMOU and MUA, there was little appetite from their delegates and membership to address these concerns through the POPs through a belief that Svitzer would seek major changes to the Newcastle POPs altogether.

Some of the issues around rolling crews forward appears to have been resolved through the recruitment of additional PPT Masters in the Port, however we continue to monitor how Svitzer applies the order of pick in the Port.

- Svitzer: Targeting of Delegates: Svitzer continued their attacks on their workforce outside the EBA negotiation forum, and has sought to target individual AIMPE delegates who have participated in bargaining over recent years. In 2022 and 2023 AIMPE has had to file several adverse action applications with the Fair Work Commission on behalf of Delegates who have been singled out by the company for disciplinary action, one for their participation in a WHS meeting, and another for being on approved long term sick leave. The adverse action applications have had the desired effect with the company not being able to “stick the landing” on any

disciplinary action against AIMPE delegates, but what this goes to show is the lowly depths the company is willing to inhabit in order to attempt to destabilise and weaken the workforce and its Employee representatives.

National Advisory Board: The NAB has not met due to the industrial tumult.

Training: As per earlier comments regarding training new entrants. A non AIMPE member (expelled member) had himself appointed to the Training Committee which AIMPE is currently disputing. The amendment to the replacement EA should fix that situation. Michaela Moss no longer works for Svitzer or Maersk.

Svitzer – NT

Darwin LNG Terminal and Harbour Towage: The replacement EA was approved without the similar threats in the National EA discussions. The main changes were the expansion of the qualifications clause to include the 364 days C/E on a vessel with one screw over 1500kW as well as the expedited changes to POPs process. There were other minor changes. The port operating procedures are in concluding stages of discussions.

New Ports: Discussions in Bunbury continue whilst the Pluto tug arrangements are subject to a Greenfields arrangement under north west shelf arrangements.

- SMIT LAMNALCO (National Agreement)

Smit and Razayat Group Share Sale: Boluda have signed an agreement to purchase the share interests to take over the towage arm of Boskalis (Smit Lamnalco). The buyout is subject of competition review in Europe and it is not known when that transaction will be finalised. Finalisation is anticipated late in the 3<sup>rd</sup> quarter 2023.

The Federal Secretary has contacted Boluda and requested a meeting. Boluda has replied that they look forward to meeting but after closure of the deal on the 3rd quarter of 2023.

National EA: A replacement agreement has been approved by members and is in the throws of review by the Fair Work Commission. The Agreement provides back pay of 4% to 9/12/2022; 1%-1/6/2023; 2.5%-9/12/2023; 2.5%-9/12/2024; 2%-9/12/2025, expiry 9/12/2026.

Mackay: The new EA deletes reference to leave in running and is replaced with a caveat that if there is a service failure, the permanent crew revert to being first call. Members were not pleased with the caveat. Instead of a day in lieu, crew will receive the ordinary recall arrangements of (cash or 1 day + 1 day cash). The other concern is that members in the port have young families and the requirement to be first response should the ETV contract be triggered is a concern. A express requirement that crew that have other obligations will be taken off the emergency response has been inserted into the EA. Regardless of the apprehensions it was a good outcome.

Townsville: The Townsville roster remains status quo despite previous attacks. The only addition is if Lucinda is placed back under Townsville new arrangements will be negotiated.

Amrun: Most of the complaints have been resolved in the new enterprise agreement. From July crew will be paid 1 travel day per swing. The new EA shortens the swings from 5 to 4 weeks. The main issue is the settlement of the port practices in the EA which have been outstanding for at least 6 years (but par for the course in Weipa region).

Weipa: The main change is the 1day travel payment per swing for FiFo.

River Logistics: An EA is in draft form but finalisation has been delayed for the national EA and this item will be moved to the Qld Branch and District Report.

Disputes and WorkCover: The only dispute relates to revalidation costs for EC3Engineers who hold EWK and COST which will be determined in the Gladstone decision.

WorkCover Review: A member in Weipa was exercising by walking during a towage only period slipped and injured himself. A Workcover claim was made and the Company stated “he was on a day off” and “was not doing something sanctioned by the Employer”. AIMPE have filed a review of the Decision rejecting the claim as the Weipa requirements are that whether on site or not crew are required be contactable during all periods of their swing and to turn to for to meet customer requirements in 60minutes or to respond to a fault on the tug. Both the Company and Rio Tinto promote exercise including walking. AIMPE has made submissions that the member was not on a “day off” and was performing something not prohibited by the employer. Qcomp have 25 days to make the Decision.

A recent Decision of the Full Bench of the Tasmanian Supreme Court has used all Federal jurisdiction precedent to reach a decision that an injury sustained by an on- call worker walking his dog in FiFo arrangements was compensable is a persuasive if not binding precedent (to the extent the Decision relied on all Federal jurisdiction Decisions. It is recommended that should Qcomp not dismiss the rejection of the claim, it be appealed as the circumstances are virtually the same in the Nazzar v Tassie Hydro case.

- SMIT LAMNALCO GLADSTONE (Sam Littlewood & Greg

Yates)Smit Lamnalco EA Renewal and Ongoing Disputes:

The Unions were advised, that despite the poor relations in the port, GPCL has decided to use its option to extend Smit’s contract to December 2026.

In March 2022 as a result of ongoing s.240 assistance in bargaining chaired by the now Vice President Asbury, the option to rollover the EA was agreed and approved by both Engineer and Deck Officers under separate Agreements. The rollover contained low wage increases of 0, 1, 1%, (3 year term) however Engineer and Deck



Officers were content to end this phase of conflict following the withdrawal of the Agreement termination application.

Again, the MUA double dealing with Officers resulted in an EA that can't be implemented in full. Whilst it had higher wage increases, the new roster and other changes to work practices cannot be implemented.

The Agreement was eventually approved by the Fair Work Commission but not without objection. In its F17 approval declaration, Smit Lamnalco made a submission that the Agreement requirement for Engineer Class 3 holders to have a trade as a Fitter, Diesel Fitter or Electrical fitter indirectly discriminated against women.

Retired Barrister Andrew Herbert was eventually engaged to appear for AIMPE in the matter. In addressing the grounds alleged by Smit that only a small percentage of women hold a mechanical trade and consequently discriminated against women, Mr Herbert added to AIMPE submissions the following (*and necessary for Council to read*):

*“.....SLTA continues to assert that the clause 13.5.4 mechanical trade requirement is a discriminatory term and or a term that is indirect discrimination, on the alleged but unproven ground that a low percentage of females who may hypothetically be candidates for appointment under clause 13.5.4 are likely to have attained a mechanical engineering trade specified in Clause 13.5.4 as a minimum competency requirement.*

*Notably, the SLTA submission does not (and could not) assert that persons who identify as female are restricted or limited in any way from attaining that mechanical engineering trade qualification, but simply that they have, for unknown and unspecified reasons, apparently chosen not to do so.*

*... and later...*

*Oddly, SLTA appears to be submitting that a clause of an Agreement in which they have agreed to require a particular trade qualification for engineering positions, will at some later hypothetical time, and in the context of a hypothetical employee or prospective employee, in some way require or permit SLTA to conduct itself unlawfully by way of adverse action which they are suggesting they would take because of the sex of the hypothetical prospective employee. (emphasis added)*

*.....*

*As only an employer can commit a contravention of Part 3-1 by taking unlawful adverse action in the present circumstances, SLTA appears to be relying on assertions as to its own prospective wrongdoing in relation to a future prospective employee, as a reason why clause 13.5.4 is now an objectionable term. It can only be objectionable if it requires, permits, or has the effect of requiring or permitting SLTA to discriminate against a particular unknown future employee, because that unknown future employee is female. The clause itself does no such thing.*

*SLTA suggests that it will, or will be required, to discriminate against a hypothetical future female employee, by imposing the same requirement on them*

*as is required of all other hypothetical future employees, and it will do so unlawfully because that hypothetical future employee is female.*

....

*In this case, in order for there to be any contravention of Part 3-1, it would be necessary for the employer SLTA to contend and admit before the Court that it chose a seemingly innocent or innocuous criterion for not appointing an identified unqualified and unsuccessful applicant for a Class 3 position, in order to disguise their true intention, which was to unlawfully prevent that identified person being employed because she was female.*

At the commencement of the hearing, a short conference was held between advocates where Smit's Counsel admitted that their case was fatally flawed.

When the hearing was convened, a gracious, but similar discussion took place where Vice President Asbury, stated *obiter* that it was not remotely a circumstance of adverse action or discrimination as alleged by the Company. The Company withdrew its objection and the agreement approved with the following statement.

[9] *In its Form F17 the Employer expressed concern that clause 13.5.4 of the Agreement, which deals with relevant trade qualifications for employees who are Class 3 Engineers, may be a potentially unlawful term. Subsequently the Employer advised that it considered that the clause was a potentially objectionable clause. The AIMPE did not share this view, and directions were issued for a hearing in relation to this matter. The parties filed a joint statement and submissions in relation to their respective positions. The parties agreed that the joint statement would be provided to the Commission and for consideration of the required matters pursuant to the Act for approval of the Agreement.*

[10] *The joint statement records that notwithstanding their different views with respect to the clause, the Company and the Union share an intention that the Agreement will not operate in a way that unlawfully discriminates in any way, be that directly or indirectly. The joint statement also records that the Employer and the AIMPE proceed on the basis that if the Agreement is approved and takes effect, s. 253(1)(b) and/or s. 356 of the Act would apply to render any objectionable term in the Agreement to be of no effect and s. 218 could provide for a variation to the Agreement subject to a referral to the Commission under the Australian Human Rights Commission Act 1986 and the Commission being satisfied of requisite matters*

This was a simple matter made complex and then simplified by the on-point wit of Andrew Herbert in seeing through the absurdity of an attempt by the company to litigate a long-agreed standard.

Gladstone Members believe that this allegation was to facilitate an MUA delegate training to MEC3, expedited trade to open up recruitment minimum standards – much more subterfuge is alleged, but they are allegations. An excellent outcome to put this matter to bed – but disputes remain. The knocking off of this argument is a key moment in the continuation of the trade with MEC3 standard, with this Company at least.

It is relevant to highlight that the MUA GPH agreement was approved containing terms that departed from the practice of having consistent port practices between all departments. The MUA have a different roster that cannot be implemented. Both Deck and Engineer officers are evaluating whether to make the next Agreement an all departments agreement – just to keep the MUA in check, It should be noted that in the MUA vote 17 Yes, 12 no and, allegedly, 7 were told not to vote if they were not going to vote yes. This leaves a lot of questions regarding the support for the MUA in the port – particularly when allegations are rife about the two MUA delegates do deals for preferential treatment in training (and recruitment into Engineer positions) and employment of relatives. But that is left as a question – not a substantiated allegation.

**Scheduling Hours of Work Dispute:** The hearing regarding the planning of work beyond 12 hours in 24 was concluded in December 2022, however the Decision is yet to be handed down. This was a complex case where Barrister Troy Spence represented the AIMPE. The matter extended to questions of if an employee is not on an uncontactable break (i.e. remains contactable and ready to turn to at 30minutes notice) is that continuous duty. A case from 1947 (Automatic Sprinklerscase, 1947) established the principle that “*those who sit in waiting also serve*” which was reflected in a Qld Industrial Court matter involving boating and fisheries where the Justice stated “*those who fish in waiting also serve*” and in Fair Work Commission proceedings as late as 2022. This will be a determining factor for the matter. Given the length of time for a decision to be handed down – it is doubtful all will be one way.

**Revalidation Dispute (Sam Littlewood):** AIMPE initiated a dispute with Smit Lamnalco in Gladstone regarding the revalidation of Certificate of Safety Training qualification for Engineers in the Port. Smit decided to take the position that Engineer Class 3 holders were not entitled to this revalidation to be covered at the company’s expense, through the issuing of an internal memo which bypassed the entitlement provisions within the recently approved Enterprise Agreement. The Enterprise Agreement was a rollover from the previous expired EBA. This represented yet another attack by a towage operator on the qualifications of AIMPE members.

Conciliation conferences were heard before Deputy President Asbury in the Fair Work Commission in the final quarter of 2022. The matter remained unresolved throughout these conferences, with a sticking point being what happens to an Engineer’s day of leave if undertaking the revalidation/refresher course whilst on a period of rostered leave.

With this issue being unresolved, the AIMPE sought a hearing “on the papers” to be ruled on by DP Asbury. In our submissions, AIMPE maintained that the EBA requires Smit to reimburse qualifications held at the time of commencing employment with the company, and therefore the COST should be reimbursed for Class 3 Engineers. This is consistent with how the EBA has operated prior to the issuing of the internal memo by the company. Despite the sticking point in conciliation being the treatment of leave days, Smit reverted to a position in submissions that there was no obligation on them at all to cover the cost of revalidation for the COST qualification. Smit have

argued that the COST is not required by the business and therefore don't have an obligation to reimburse course costs.

Submissions between the parties were finalised and provided in February 2023, however we are still awaiting a determination of the dispute to be issued by the now Vice President Asbury.

### Disputes and Unfair Treatment:

A notable escalation of disputation is evident at Gladstone tugs. In what can be characterised as subversive and victimisation of Engineers in a campaign by the local manager to blow apart the moral and cohesive fraternity of AIMPE (and AMOU) membership. These events are:

### Adverse action or Bullying:

- One member was pursued for making fraudulent expense claims which were simple errors, then was subject to investigation about a vessel failure and then subject to an inquiry regarding an incident where a subcontractor dismissed the Chief Engineer instructions. The AIMPE initiated an application to stop bullying, however, after a period of absence due to stress, and ongoing pressing of a frivolous misconduct claim, the member found other work. After 25 years plus of working for the tugs in the port, the Qld Branch could not let this faithful member walk away with nothing and a settlement was reached on the cusp of a decision for accepting the other work. The application was not able to be pursued.
- Victimisation and hounding of a Engineer HSR: A directive was issued by the Port Manager that a failure to follow the PMS would result in disciplinary action. The directive contained the threat of termination. Following vessel breakdowns, the tugs' Engineers were issued with please explain letters and despite those issues either being due to the neglect of ashore support or ordinary operational issues, the inquiries were pressed. At the time, Engineers approached the HSR indicating that the stress and micromanagement was, in simple expression, getting on top of them. The HSR expressed this at a WHS meeting where it was suggested he refer them to the confidential Hunterlink service. Two weeks later began a series of hounding and harassment that the HSR must give the company the names of the Engineers. The HSR refused on the basis they did not consent. A show cause was issued in April 2023 (4months later). AIMPE made an application to stop bullying but also crafted a complaint to the WHS Inspector and requested the Regulator intervene to resolve the "safety issue" regarding the need to breach confidentiality. At each step, the HSR member responded properly. Whilst the FWC application was awaiting directions for proceedings, the WHS Regulator investigated the complaint and issued a statement that the HSR has the responsibility and obligation to keep confidential the identities of complainants should they seek that. This will support the "stop bullying" application which is scheduled for 13 June before Cr Spencer. Sam Littlewood will be advocate in the matter.
- Engineers on extended injury/illness leave: During the course of the last 12months 6 Engineers had taken extended leave either due to work and non-work

related injuries. The absences are/were long term. One Engineer with a workplace injury was terminated, however the member is seeking a common law claim for his injury privately. A member with a farm injury was harassed about a date for return to work and should do so shortly. A member with a knee injury has returned to work, however was harassed because of his absence. A member who had a stroke was immediately written to (whilst still in hospital) with the local manager insisting on a date to return to work. One other is a long term injury following being hit by a car and disputed WorkCover claims – this is also being handled privately. And the last was the Employee who resigned for other work.

- Disproportionate action for vessel breakdowns: At least 5 engineers have been subject to inquiry for breakdowns that were rectified immediately. The harassment is unreasonable and disproportionate.

AIMPE has written to the company stating that the above action is disproportionate to the circumstances and there should be a softening of how these matters are dealt with. Whilst the company IR acknowledges this, the local manager continues to treat those outside his “purple circle” with any respect. An example is that a skipper that was appointed outside the normal recruitment practice during an LNGescort performed a manoeuvre that compromised the tug where it was T-boned. No inquiry, reports that the incident logs were altered and no ATSB investigation is known to have taken place – swept under the carpet.

AIMPE will ramp up its campaign to have a safe workplace free from harassment and bullying following the clearing of the current workload.

Other Disputes either notified or in progress:

- C2023/2529: Local Manager providing misleading shortlisting information: This matter directly involves a GPH employee who has been given more favourable treatment to the detriment of other Engineers. At conference on 29 May, VP Asbury agreed that the company properly detail experience, work with the union to stop disputes, that the appointee (casual) not be given a permanent job unless the proper merit selection occur and provide evidence that the casual satisfies the trade qualification requirements.
- C2023/1512: The scheduling of last jobs planned in excess of 12. VP Asbury advised this will be address in the 12/24 dispute decision;
- C2023/1516: Status of the victualling allowance. AIMPE submission due 2/6/2023, however, this should settle with an undertaking beforehand;
- C2023/1517: Continuous duty when tugs are called out when allocated to standby. Submission due 2/6/2023. Written submission only.
- C2022/220: Ordinary scheduling of hours in excess of 12. Submission made and awaiting a decision;
- 10hour break before commencing maintenance at 0700 when on secondary tugs;
- Payment for casuals engaged past the ordinary definition of a day (i.e. not paying 2 days, but overtime);
- Working past 0700 on the last day of the swing.

- Failure to count unpaid time due to illness or injury toward long service leave entitlement.

Note: there are other outstanding disputes – the status of those will be verified.

Summary: From the previous years the status quo remains where: Membership in the port are over utilised. Engine hours are up, tug jobs between 9K-10K per annum, planned maintenance is way behind using an poorly implemented/irrelevant PMS, and other incidents of poor work by contractors is ongoing. In addition, tug breakdowns are all too frequent. AMSA have taken a strong interest in Gladstone's performance during 2023.

All indicating that the port does not have enough crews or enough tugs.

And now local management are doubling down on their less favourable treatment of members in the port.

MUA are a threat in this port and members are keeping a close watch on their activity. With the MUA delegate somehow obtaining an MEC3 and a trade without dedicated seatime or work in a trade is bewildering at the least and is now a potential casual engineer. The MUA Rule arguably does not cover Engineers.

Both Delegates Kerry Mann and Brett Langridge have been excellent in their roles in guarding the port, in adversity whilst Svitzer has taken so much time cannot go without acknowledgement.

- WESTUG Associated Entities: Engage Marine and Engage Towage

Bowen/Abbot Point: From reports the EA that AIMPE drafted and was approved continues to service the port well. There has been a turnover of 2 out of 6 Engineers who are working ashore in mines or working with another towage company. There are one or two members to sign up in this operation.

Geelong, Port Latta, and Whyalla: Engage Marine are continuing to push on with the co-operative model where Crew are employees but the arrangement requires they have "skin in the game" requiring shares in the Port Co-op. It is understood that the Co-op model is established in Geelong and is continuing implementation at Whyalla. Organising visits are required for these ports to ensure maximum membership and membership is maintained. Whyalla continues as live-a-board where the crew are receiving similar salaries for a 1 on 2 off roster ratio (actual pattern may vary).

Port Jackson and Port Botany: Engage Towage is a joint venture with Smit Lamnalco and during 2022/23 the Co-op was to be established however it is not confirmed as to whether this is the case. There was the "new approaches" bargaining underway, however with the distraction of Svitzer and Gladstone priorities, contact with these crews remains low.

### - PORT HEDLAND

The partnership model continues in Port Hedland with BHP, FMG and Roy Hill facility.

### - MACKENZIE MARINE AND TOWAGE: Esperance

The license for the Port of Esperance is currently under consideration by the port authority. Whilst Mackenzie has held the contract for some years, interest in the port has been reported to be contested. The status of no agreement covering the workforce continues.

### - KING BAY MARINE EMPLOYMENT SERVICES (*Riverwijs*)

Svitzer are to take over operations in the Port. The WA Senior National Organiser will be visiting the port shortly to meet members for an update the status.

### - Engage Marine/Westug (North West Crewing and Sea Crewing Australia)

There are some 40 Engineers working as employees for Westug through both subsidiaries working out of Dampier, Port Wallcott/Cape Lambert on Rio Tinto tugs.

Westug provide towage services on the Dampier Archipelago for Rio's Dampier and Cape Lambert operations. Westug are covered by "The West Tug AIMPE, *North West Crewing Pty Ltd 2017 Agreement*" as well as the *Sea Crewing Australia Enterprise Agreement* (which is intended [but doesn't in application] to exclude work in the north west). The Agreements have not be renegotiated or replaced.

Westug have been pressuring crew to transfer to Partnership models in both operations. AIMPE does not have information to hand as to the success, but it is understood that some crews have established partnerships.

The WA Senior National Organiser has been recently prioritised the Offshore negotiations and an update is not available.

### - TASPOTS TOWAGE (ENGINEERS) ENTERPRISE AGREEMENT 2022.

The current Agreement Expires 30 June 2023.

The current wage level for Engineers in Hobart and Northern Ports is \$171,206.12, for the North Western Ports it is \$186,815.68.

The negotiations for the 2023 Enterprise Agreement are yet to commence. The 2022 Agreement was a 12-month roll-over Agreement. Tasports are currently undergoing a major review which could result in a restructure. There is an ongoing Public Policy issue for Tasports being both the State regulator and the provider of Towage services. It would not be a surprise to see the Towage Department spun off into a separate entity. This review is delaying the start of the new negotiations. Upon the expiry of the current Agreement on 30 June it may be necessary to initiate bargaining

under the new laws which will have come into force on 6 June. Another 12-month roll-over Agreement may also eventuate.

The final ATSB report into the 2022 collision of the *Goliath* bulk cement carrier and the TasPorts Tugs, York Cove and Campbell Cove was released on 14 March. The ATSB found that, in the process of a transfer of manoeuvring controls from *Goliath*'s bridge to the bridge wing, the correct steering mode was not selected. Consequently, control of the ship's rudders remained at the wheel, inside the ship's wheelhouse, while the master attempted to manoeuvre the ship in the swing basin using the bridge wing VecTwin joystick panel. The master's manoeuvring orders, issued in the belief that the ship was in joystick steering mode, had the effect of increasing the ship's speed as it closed on the tugs before colliding with them. The investigation found that neither the master nor the second mate had undertaken the required bridge resource management (BRM) training and that BRM on board was ineffective. The design of the ship's joystick system was also identified as having increased the risk as it was misleading and did not provide a positive visual confirmation that the correct steering mode had been selected. Finally, the ATSB observed that, while the TasPorts risk assessment for Devonport had considered the potential for collisions between ships manoeuvring in the swing basin and smaller vessels in the vicinity, the risk of injury to personnel on board those smaller vessels was not specifically considered. On this occasion, it was largely fortuitous that there were no personnel on board the tugs at the time of the collision. The report also acknowledges the issue that AIMPE raised with the Authorities in relation to the failure of the Master to sound the horn to warn personnel on the Tugs as part of the emergency response. The failure of the horn not being sounded resulted in no warning of the impending collision for anybody who may have been working on the Tugs at the time. Thankfully nobody was on the Tugs at the time. It is to be hoped that the Bridge Resource Training that the Deck Officers have to undertake will include that as part a collision drill.

### - Portland Tugs

*Port of Portland – AIMPE Engineers Enterprise Agreement 2022*

The current Agreement Expires 30 June 2026

The current wage level for Engineers from 1 July 2022 is \$190,697.84.

The EA remains a stand-alone AIMPE EA.

The major issue at Portland Tugs remains the ability to find relievers and succession planning for future Engineers. To address this Portland Tugs are sponsoring a Trainee through college to gain an Engineering COC.

### - Port Lincoln Tugs

*Port Lincoln Tugs Pty Limited & AIMPE Enterprise Agreement 2022.*



The new Agreement expired 27 January 2026.

The current wage level for Port Lincoln is \$151,964.80 and Thevenard is \$124,680.40. The Thevenard wages are supplemented by Productivity Payments of \$170.74 per towage job and the 75% tug in Port Lincoln also receive the Productivity Payment.

Following the Disputes around the introduction PLT's proposed "one wage system" that would have resulted in the Master & Engineer in Thevenard receiving approximately a \$6000 up lift but the GPH's would have received approximately an \$11,000 uplift while the Master and Engineer in Port Lincoln would have had to cop a wage freeze until Thevenard caught up, the negotiations were reset around our Log of Claims for a 5% wage increase.

The result was a rollover Agreement for 4 years expiring 27 January 2026 with Annual wage increases of CPI as at 31 December capped at 5.0% and guaranteed at no less than 2%. Plus a Sign On Bonus of \$750, increases in productivity payments from \$131.40 per job to \$170.74 per job and an increase in Dry Dock Payments to \$250 per day for employees doing Dry Dock Jobs.

- DALTUG – Dalrymple Bay

This operation is a shareholder operation originally started by an MUA delegate/member. It is an unusual workplace where either crew are inside or outside "the circle" and despite the status of a "shareholder" company, there appears little compliance with company reporting etc. Engineers membership is low, if any, whilst AIMPE is a party to the Agreement.

- PACIFIC TUG – Wide Bay Shipping Services, Bundaberg and Eden

Pacific Tug continue in Bundaberg (also servicing Port Alma) and Eden. The company continues to tender for work unsuccessfully. The family owned business has been picking up spot work for relocations and emergency tows for Defence but is now engaging in a larger venture of expanding the Burnett Heads facilities in Bundaberg for shipping to Pacific Islands and a variety of cargoes.

The port development is progressing and a visit will be programmed during late June or July.

- OTHER OPERATORS

- Pacific Marine Group: The Qld Branch along with AMOU are attempting to organise this workplace whilst PMG have a contract on the Townsville dredging.
- Bhagwan Marine: have no harbour towage work and are involved in Hay Point wharf refurbishment. Whilst it does have tug capacity for harbour towage work and the East Coast manager is a former Adsteam Master, it is not engaged in harbour towage work. There are undertakings in the latest EA that require the company to consult if it seeks to tender in that area. A related entity called DSL Marine have a registered Agreement that covers towage but with no relevant

classification. The MUA have appealed the approval and DSL are making undertakings regarding scope.

- Strategic Workforce Solutions: Possibility of reverting to Svitzer National EA in the future according to an exchange of letters.

A watch will continue to be kept on these operators during ensuing year.

### ACHIEVEMENTS AND OUTLOOK

The major achievement of securing key amendments to MO505 has ended most arguments about the Engineer role, however, the tug owners' claims to reduce minimum recruitment continue.

Hours of work continue to need significant attention from a regulatory point of view to resolve this key member issue.

The Marine Towage Award 2020 requires a comprehensive review.

A good working relationship with the Qld AMOU continues in the portfolio however, it seems at a national level the relationship with the MUA has been elevated to a status of being "respectful".

The thwarting of the Svitzer EA termination and Svitzer's strategic "own goals" have ended in an EA that could have been far worse or even worse through an expensive arbitration. Institute staff worked hard on ensuring a large legal bill was avoided.

Despite the limited resources, state based support from Sam Littlewood has been again been exemplary along with Nathan Niven, Michael Bakhaazi working with the tireless efforts of Delegates and members in dealing with disputes and keeping up with as much as time allows.

Thankyou to Delegates and members for their patience, advice, criticism and debate in what has been achieved in preventing a towage industry free for all.

Greg Yates,  
Senior National Organiser

Schedule 1: Agreements;

Schedule 2: Tug Port Visits (NOT SUPPLIED IN THIS REPORT)

*The opportunity for tug visits has been limited focus on negotiations.*

## SCHEDULE 1: HARBOUR TOWAGE AGREEMENTS:

Agreements currently under negotiations/being finalised or to commence during 2023-24

- Svitzer National EA
- Svitzer Bunbury (directly with crew)
- Svitzer Pluto Tugs (greenfields)
- Smit Lamnalco Gladstone EA (to recommence 2024).
- Engage Towage EA (Geelong, Whyalla, Latta and Sydney) – in the Coop structure.
- Pacific Tug.

## NATIONAL AGREEMENTS

Svitzer Australia Pty Limited National Towage Agreement 2013 (joint department agreement) (Expires: 31 Dec 2019) Agreement covers approx. 14 ports (the new Agreement is near to ballot and is proposed to expire 4 years from approval (say July 2027)).

Smit Lamnalco Towage (Australia) Pty Ltd AIMPE Marine Engineers Harbour Towage Enterprise Agreement 2022 – AG2017/3128.(Expires 9 December 2026). Agreement covers 8 ports – only operational towage in Qld ports.

## STATE SPECIFIC HARBOUR TOWAGE AGREEMENTS:

NSW: NIL

VIC/TAS:

Port of Portland Tug AIMPE Engineers Agreement 2012  
(Expires 30 June 2026).

Tasports Towage Enterprise Agreement 202- AIMPE  
(Expires 30 June 2026).

Strategic Workforce Solutions Pty Ltd Enterprise Agreement 2020 (*NOTE: Outsourced Svitzer Geelong Operation*)– Expires 9 February 2025

QLD:

SMIT Lamnalco Towage Australia Pty Ltd and AIMPE Engineers Agreement 2012  
Expired 30 December 2024 – Covers Gladstone only. Currently under negotiation.

Pacific Tug – Qld Regional Ports EA (JOINT DEPARTMENT AGREEMENT):  
(Expires 30 June 2023).

Daltug Pty Ltd Enterprise Agreement (Made 2022 – Expires 10 June 2026)

SA/NT:

Svitzer Port of Darwin Engineers Terminal Towage Enterprise Agreement 2013  
(Expires 31 Dec 2026)

Port Lincoln Tugs Pty Ltd & AIMPE Enterprise Agreement 2022 –  
(Exp: 27 January 2026)

WA:

KBMS/AIMPE Engineers Enterprise Agreement 2023 – (Expires 21 February 2025)

North West Crewing Australia Pty Ltd Enterprise Agreement 2018 (Expired 25 June 2022).

Sea Crewing Australia Pty Ltd Enterprise Agreement 2017 –AG2017/686 (Expires 12 May 2021)

No Agreements:

Engage Towage – Whyalla	Proposed Coop Employee model.
Engage Towage – Geelong	Established Coop Employee model.
Engage Towage – Sydney Ports	Proposed Coop Employee model.
Engage Towage – Port Latta	Coop Employee model (status?).
Svitzer Bunbury	No agreement
Svitzer Geelong	Out sourced to SWS
Svitzer King Bay (Pluto Tugs)	Not commenced operation
Svitzer Gorgon LNG Terminal Towage	Partnerships.
Svitzer Wheatstone	Partnerships
Port Hedland (BHP)	Partnerships
Hay Point (BMA)	Partnerships
Daltug, Queensland	Employee Shareholders EA
Gove, NT	Rio Tinto Management contracts
Groote Eylandt, NT	Rio Tinto Management contracts
MacKenzies, Esperance WA	Family business

- END REPORT -