AIMPE SUBMISSION

To the

Senate Education and Employment Committee

Inquiry into

Corporate Avoidance of the Fair Work Act

Prepared by

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Federal Secretary

BACKGROUND

The Australian Institute of Marine and Power Engineers [AIMPE] is registered in accordance with the provisions of the Fair Work (Registered Organisations) Act 2009. AIMPE is the registered organisation which represents qualified Marine Engineer Officers throughout Australia. This submission is made on behalf of AIMPE, its federal executive and its members.

AIMPE came together as a federal trade union in 1881 after several years during which local organisations were formed in the various colonies of Australia and New Zealand. Subsequently, in 1906, AIMPE was registered under the Conciliation and Arbitration Act 1904. AIMPE has operated as a Federally-registered trade union continuously since then.

AIMPE members operate, maintain and repair marine vessels of all sorts including cargo ships of all types and sizes (tankers, dry bulk, LNG, ro-ro etc.) as well as vessels dedicated to the offshore oil and gas sector, tugboats, dredges, ferries, defence support craft, research vessels and Border Force vessels.

AIMPE represents these members and has bargained for over 75 current Enterprise Agreements under the Fair Work Act. AIMPE is covered by these Agreements and AIMPE members have their pay and conditions protected by these Agreements. AIMPE has direct experience of the operation of the Fair Work Act through the bargaining and related processes and through dispute settlement procedures.

AIMPE appreciates the opportunity to make a submission to the Senate Committee about the subject of Corporate Avoidance of the Fair Work Act because it has had and continues to have very significant adverse impacts on AIMPE members in the maritime industry.

EXECUTIVE SUMMARY

This submission is structured to address the issues identified in the terms of reference for the current inquiry in the order set out in those terms. AIMPE's submissions are supplemented by a number of **case studies** which are linked to the relevant terms of reference. This material demonstrates that a number of companies operating in the Australian maritime industry have avoided, and continue to avoid, some of the key obligations imposed by the Fair Work Act. This is unfair to Australian workers and seriously undermines confidence in the Australian system of industrial relations.

Some companies have exploited the availability of s.457 visa **guest workers** to avoid certain Fair Work Act obligations. Some companies have utilised this approach to the extent that it is an integral part of their business model. These companies predicate their operations on excluding Australian workers and using guest labour on a routine basis. (Often these companies are Australian subsidiaries of much larger foreign owned corporations.) This strategy has resulted in qualified and experience Australian Marine Engineers being excluded from employment. This is not fair to these Australian workers. This is a clear example of what is known as social dumping elsewhere in the developed economies of the world.

The use of guest labour has the consequence of excluding Australian registered organisations from bargaining and from participation in the Fair Work Commission approval processes. This exclusion of Australian registered organisations enables these companies to achieve wages and conditions below the prevailing market conditions in the sector and gain an unfair advantage over companies which respect and abide by the obligations of the Fair Work Act.

> ***AIMPE Recommendation 1***
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> *AIMPE submits that the Senate Committee should recommend that the Fair Work Act be amended to ensure that Enterprise Agreements not be permitted to be registered if they have been signed overseas by guest workers holding or seeking temporary work visas. This practice should be specified as an unfair bargaining practice and should be prohibited.*
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> ***AIMPE Recommendation 2***
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> *AIMPE also submits that the Senate Committee should recommend that the Fair Work Act be amended to ensure that the relevant organisation[s] should be entitled to full disclosure of documentation provided to the Fair Work Commission by an employer who applies for approval of an Enterprise Agreement which has been voted on by guest workers or employees working under temporary visas. Furthermore*

AIMPE submits that the Senate Committee should recommend that the Fair Work Act should be amended to prohibit the granting of confidentiality orders in relation to applications for approval of Enterprise Agreements that are signed by guest workers or employees working under temporary work visas.

AIMPE Recommendation 3

AIMPE further submits that the Senate Committee should recommend that the Fair Work Act be amended to ensure that the relevant organisation[s] should be entitled to standing as of right during the initial approval process for an enterprise Agreement which has been voted on by guest workers.

AIMPE has also been advised that at least one maritime employer in Australia is deducting **agency fees** from employees' wages which appears to be contrary to the Maritime Labour Convention.

AIMPE Recommendation 4

AIMPE recommends that the Fair Work Ombudsman should examine and investigate Inco Ships Pty Ltd employment practises, hiring practises, the relationship to an Overseas Employment Agency of the same address and the extent to which foreign employees are being made to pay commissions with Inco Ships Pty Ltd consent to these foreign employment agencies.

Other companies have consciously denied Australian workers their rights under the Fair Work Act and under other legislation establishing rights for workers [for example workers compensation laws and occupational health and safety laws]by requiring contractors to establish **sham partnership** arrangements in order to gain work. Partners of course are not employees. Nor is a partnership the same as an independent contractor. Partnerships in Australia are generally regulated by laws of the State Parliaments – most of which date from the nineteenth century – e.g. *Partnership Act 1891* (Queensland) and *Partnership Act 1895* (Western Australia).

The Australian Parliament has dealt with sham contracting arrangements on an individual basis - Fair Work Act 2009, Division 6—Sham arrangements. However the partnership structure is not addressed by the existing sham contracting prevention provisions. As a result in certain sectors of the maritime industry the rights of workers under the Fair Work Act are being completely denied.

AIMPE Recommendation 5

AIMPE submits that the Senate Committee should recommend that the sham work arrangements contained in Division 6 of Part 3-1 of the Fair Work Act be amended to ensure that sham partnership arrangements should not be permitted to avoid the rights provided for workers under the Fair Work Act.

Further the Fair Work Commission should be invested with powers to determine a dispute where so-called Partnership Arrangements displace (or are otherwise inappropriately used in lieu of) conventional employer/employee relations. In addition AIMPE submits that the Fair Work Act should be amended to provide that relevant registered organisations should have standing as of right to initiate such dispute proceedings and to appear.

When employees have voted against a company proposal for an Enterprise Agreement, including on more than one occasion, some companies in the maritime industry have used **different corporate entities** to circumvent the employee opposition to the proposed terms of the Enterprise Agreement.

AIMPE Recommendation 6

AIMPE submits that the Senate Committee should recommend that the Fair Work Act be amended to ensure that Enterprise Agreements not be permitted to be approved if the employer has changed corporate entities during the bargaining process. This practice should be specified in the Fair Work Act as an unfair bargaining practice and should be prohibited.

AIMPE has also been involved in enterprise bargaining where a member of **senior management** has participated in the bargaining as an employee representative. This is not consistent with the intent of the bargaining provisions. If senior management are employees then they should have a separate Enterprise Agreement in which case it would be appropriate for them to be bargaining representatives. But when the bargaining process is intended to produce a general Enterprise Agreement for employees the process is rendered unfair if senior management participate as employee representatives.

AIMPE Recommendation 7

AIMPE submits that the Senate Committee should recommend that the Fair Work Act should be amended to provide that no member of senior management in a company should be permitted to be an employee bargaining representative unless the bargaining is exclusively for a management Enterprise Agreement.

SPECIFIC TERMS OF REFERENCE

a) The use of labour hire and/or contracting arrangements that affect workers' pay and conditions;

AIMPE notes that this term of reference refers to labour hire and/or contracting however in our submission the emergence of a new trend in sham partnerships has the same intent – the avoidance of the provisions of the Fair Work Act. AIMPE therefore provides the following case studies which all highlight the use of partnership arrangements – arrangements which AIMPE submits are sham arrangements which deny the workers involved their rights under the Fair Work Act and other legislation intended to protect workers.

Partners do not have the same statutory rights as employees to have their employer take responsibility for:

- Superannuation;
- workers compensation insurance;
- accident indemnification;
- income tax deductions/remittances;
- occupational health and safety.

Indeed the legal consequences of partnerships involve a major transfer of risk and responsibility. Under a partnership arrangement the entity which would otherwise be the employer and would be responsible for the normal associated risks in relation to, for instance, accidents and injuries effectively offloads those risks to the partnership. Each partner is liable jointly and severally for the actions of any member of the partnership. Each worker who is a partner is effectively required to provide all of their own insurances either individually or through a policy or policies taken out by the partnership.

AIMPE Case Study a1 -
The Riverside Coal Transport Co. Pty Ltd

1. The Riverside Coal Transport Company Pty Ltd (Riverside) has been registered with ASIC since 1926.

2. Riverside trade under an number of other company names or subsidiaries including the following known names:
   - Rivtow Marine Pty Ltd
   - Rivtow Marine Queensland Pty Ltd
   - Capricorn Barge Company Pty Ltd
   - Riverside Sands Pty Ltd
   - Fantasea Cruises Pty Ltd

3. Riverside are mainly recognised under the brand of Riverside Marine and are headquartered in Newstead, Brisbane and there may be several other trading names related to the Riverside network of companies.

4. Riverside have engaged in the employment avoidance strategies for at least two decades in crewing vessels in the following operations:
   - Barge and sand transport from Stradbroke Island
   - Community barges and ferries in Townsville
   - Government Contracts (since 1996) with the Australian Institute of Marine Science
   - Habour towage services in Port Hedland and Hay Point
   - Maintenance dredging
   - Whitsunday tourism

5. In contrast, Riverside directly employ crews on vessels directly in Withnell Bay in a joint venture as well most recently in Gladstone on ferries servicing Curtis Island.

6. Relevant to the Senate Inquiry is that on the Brisbane River sand and barge trades and Australian Institute of Marine Science research vessels, crews were directly employed by previous management companies or covered by enterprise agreements, however, Riverside ceased those employment arrangements and replaced them with partnership contracts. This same employment avoidance strategy was engaged in most recently in Port Hedland and Hay Point.

7. AIMPE submits that these arrangements are sham arrangements intended to avoid the application of the Fair Work Act and other employee protection legislation.

8. AIMPE recommends that the sham work arrangements contained at Division 6 of Part 3-1 of the *Fair Work Act 2009* be broadened to invest the Fair Work Commission with powers to determine a dispute where so-called Partnership Arrangements displace (or are otherwise inappropriately used in lieu of) conventional employer/employee relations and determine the true nature of the engagement as an avoidance of what otherwise be an engagement under a contract of service.

AIMPE Case Study a2 - Port Hedland Tugs

1. Port Hedland, Western Australia, is the largest iron ore export port in the world. Initially towage in Port Hedland was undertaken by a company called Adsteam that employed tug crews on a conventional employer and employee relationship basis.
2. Subsequently in Port Hedland, the employment of tug crews were transferred from Adsteam to BHP Transport and Logistics, and then from BHP Transport and Logistics to Teekay Shipping (Australia) Pty Ltd.

3. In November 2015 BHP Billiton which holds a non-exclusive licence for the provision of towage in Port Hedland, announced its contractual arrangements with Teekay Shipping would terminate in Q1 2016 and thereafter RivTow Marine would engage tug crews under Partnerships as distinct from conventional employment arrangements.
4. As a consequence 66 employee marine engineers covered by a Fair Work Act compliant enterprise agreement were terminated and were replaced by so-called partnership (non-employee) arrangements.
5. There are 18 tugs in the Port that require crews.
6. Tug crews that want to work for Rivtow are required to enter into two contracts. The first contract is a Management and Procurement Contract. The second contract is a Partnership Contract.
    a. We have attached a copy of Rivtow's Management and Procurement Contract – see Appendix AIMPE a2 A.
    b. We have additionally attached a copy of Rivtow's Partnership Service Contract – see Appendix AIMPE a2 B.
7. From discussions that AIMPE has had with our members who work in Port Hedland we are aware that the duties and functions that are performed by Engineers who are engaged under so-called Partnership Arrangements by Rivtow are the same as those that were previously performed by those who worked for Teekay Shipping. We are also aware based upon our dialogue with Engineers in the Port, that Rivtow exercises a veto by excluding some former Teekay tug crew personnel and in their stead, inserting alternative personnel.

8. Most of the responsibilities and duties contained in clause 6 of the Partnership Service Contract are the same or similar responsibilities and duties to those that the crews on the tugs in Port Hedland have always been responsible for. There are only two differences. The first difference is that Teekay Shipping provided basic food and beverages such as tea, coffee, biscuits and canned beans. In recent years, the crew on the tug have been responsible for bringing their own food to work. The second difference is that Teekay Shipping were not too concerned with what personal items the crew brought on board the tug.
9. In clause 6, Rivtow has been very prescriptive in describing the responsibilities and duties of the crew on the tug. In doing so they have narrowed the discretion that tug crews have previously had in how they operate the tugs and perform their duties.
10. AIMPE submits that the Senate Committee should recommend that the sham work arrangements contained at Division 6 of Part 3-1 of the *Fair Work Act 2009* be broadened to invest the Fair Work Commission with powers to determine a dispute where so-called Partnership Arrangements displace (or are otherwise inappropriately used in lieu of) conventional employer/employee relations.
11. Further AIMPE submits that the Fair Work Act should be amended to provide that relevant registered organisations should have standing as of right to initiate such dispute proceedings and to appear.

AIMPE Case Study a3 - Gorgon LNG Terminal Tugs

1. Svitzer Australia Pty Ltd engaged in a tendering process conducted by the Chevron group for the terminal towage work for four tugs at the Gorgon LNG export facility on Barrow Island.
2. Ahead of the tendering process in 2010 Svitzer proposed that AIMPE agree in principle to an agreement titled Svitzer Australia Pty Limited and AIMPE (Gorgon Project) Towage Greenfields Agreement 2013. AIMPE agreed to the proposal subject to negotiation of final details of salary and allowances.
3. The contract for the Gorgon terminal towage was awarded by Chevron under an exclusive contract to Svitzer.
4. The contract would have had 16 crews (58 employees) working on 4 tugs.
5. The behaviour of Svitzer following the award of the contract was consistent with implementing the agreement in principle. In October 2014 Svitzer met with AIMPE and other employee representatives for a briefing on the progress of the construction of the tugs and the company's views on the terms of the Greenfields Agreement. An initial draft was discussed.
6. On 10th January 2015 Svitzer sent to AIMPE a draft document entitled SVITZER Barrow Island Terminal Towage Engineers Greenfields Agreement 2014 by email and requested a response from AIMPE by 12th January 2014.
7. On 12th January 2015 AIMPE advised Svitzer that AIMPE agreed with the proposal and was prepared to sign the Greenfields Agreement immediately. AIMPE understands that the Australian Maritime Officers Union likewise advised Svitzer of acceptance of the proposed Greenfields Agreement for tug masters.
8. On 12th January 2015 Svitzer advised all three maritime unions that the negotiations would be terminated because "the terms are not agreed by all three Maritime Unions". This was clearly ambiguous wording given the acceptance by two unions. Svitzer subsequently advised that the tug crews would be engaged under Partnership Contracts.
9. From discussions that AIMPE has had with our former members who work in Gorgon we are aware that the duties and functions that are performed by Engineers who are engaged under so-called Partnership Arrangements by Svitzer are the same or substantially the same as tug crew employees engaged on tugs that service ships at the Woodside LNG export facility in Dampier and tug crews employed in the Port of Darwin to service LNG tankers at the Wickham Point LNG terminal.
10. AIMPE is also aware based upon our dialogue with Engineers in the Port, that Svitzer exercises a significant degree of control over the engagement of crews, when and how crews are deployed and performance of duties in carrying out the towage service.
11. Most of the responsibilities and duties are the same or substantially similar to those performed by tug crews in other Ports operated by Svitzer.
12. AIMPE recommends that the sham work arrangements contained at Division 6 of Part 3-1 of the *Fair Work Act 2009* be broadened to invest the Fair Work Commission with powers to determine a dispute where so-called Partnership Arrangements displace (or are otherwise inappropriately used in lieu of)

conventional employer/employee relations and determine the true nature of the engagement as an avoidance to what otherwise be an engagement under a contract of service.

AIMPE CASE STUDY a4 - Hay Point Coal Terminal Tugs

1. The coal export terminal at Hay Point south of Mackay in Queensland has had until 1 July 2016 tug crews covered by Enterprise Agreements approved under the Fair Work Act.
2. Two tugs provide towage services to ships arriving and departing from the terminal. The tugs are owned by the joint venture operator of the terminal, BHP Mitsubishi Alliance (BMA).
3. Four tug crews were employed under Enterprise Agreements to operate and maintain the tugs and thus supply towage services to ships using the coal terminal.
4. Prior to 2001, the crews were directly employed by BHP Transport however subsequently supply of crews was contracted out to Teekay Shipping (Australia) Pty Ltd (Teekay). So Teekay were the employer of crews for approximately 17 years.
5. In early 2016, BMA sought tenders for the contract.
6. The incumbent manager and employer of crews Teekay submitted a tender bid but did not win the contract.
7. The contract was won by Rivtow Marine Pty Ltd (Rivtow), which has engaged crews under so-called partnership/contract arrangements. AIMPE submits that this is in essence a Fair Work Act avoidance strategy.
8. The Teekay tug crews were terminated and paid redundancy payments.
9. From information received tug crews' duties are the same or substantially similar to crews previously employed by Teekay and indeed in other towage operations in other Australian ports. The only difference being the crews are no longer engaged as employees under a contract of service.
10. Rivtow exercise control of the tug crews' activities to the same extent as the control exercised over previous tug crews engaged under as employees under a contract of services under a Fair Work Act registered enterprise agreement at the Hay Point operation.
11. However the tug crews are no longer entitled to the protections of the Fair Work Act because they are not regarded as employees. Consequently they do not have the protection of the National Employment Standards. They are not entitled to engage in enterprise bargaining – the normal entitlement of workers in the rest of Australian society.
12. In addition as members of partnerships they have to take on substantial additional risks that are normally the responsibility of the employer in standard employer/employee relationships.
13. AIMPE recommends that the sham work arrangements contained at Division 6 of Part 3-1 of the *Fair Work Act 2009* be broadened to invest the Fair Work Commission with powers to determine a dispute where so-called Partnership

Arrangements displace (or are otherwise inappropriately used in lieu of) conventional employer/employee relations and determine the true nature of the engagement as an avoidance to what otherwise be an engagement under a contract of service.

AIMPE Case Study a5 - Wheatstone LNG Terminal Tugs

1. Svitzer engaged in a tendering process for the terminal towage work for four tugs at the Wheatstone LNG facility in Western Australia.
2. In January 2016 AIMPE reached an agreement in principle on an appropriate greenfields enterprise agreement to cover the new operations. This correspondence is at Attachment 1.
3. The license for the Wheatstone terminal towage was awarded on an exclusive contract to Svitzer.
4. The contract would have had between 12 and 16 crews working on 4 tugs.
5. Following the pattern of behaviour of Svitzer at Gorgon, the AIMPE made several attempts to contact Svitzer about approval of the enterprise agreement during 2016.
6. On 30 May 2016 Svitzer advised that the tug crews would be engaged under Partnership Contracts indicating that the Contract Principal, Chevron, legally issued a directive to do so. This correspondence is at Attachment 2.
7. From the outline of the partnership arrangements at Attachment 3, the work to be carried out by the Wheatstone tug crews would be the same or substantially similar to crews in other Svitzer towage operations in other ports.
8. The main difference being the obligations in relation to liability and costs of repatriation.
9. Svitzer still substantially control the crews activities to the extent of the control exercised over Svitzer crews in other ports engaged under a contract of services under a Fair Work Act registered enterprise agreement.
10. AIMPE recommends that the sham work arrangements contained at Division 6 of Part 3-1 of the *Fair Work Act 2009* be broadened to invest the Fair Work Commission with powers to determine a dispute where so-called Partnership Arrangements displace (or are otherwise inappropriately used in lieu of) conventional employer/employee relations and determine the true nature of the engagement as an avoidance to what otherwise be an engagement under a contract of service.

b) Voting cohorts to approve agreements with a broad scope that affect workers' pay and conditions;

AIMPE Case Study b1 –

Mermaid Marine Australia Vessel Operations Pty Ltd

12. The nominal expiry date for the *Mermaid Marine Vessel Operations Pty Ltd Australian Institute of Marine and Power Engineers Enterprise Agreement 2010* (2010 Agreement) was 31 July 2013.
13. The Australian Mines and Metals Association (**AMMA**) has represented the company during the negotiations.
14. The bargaining representatives attended negotiation meetings on the following dates: 27 March 2013; 24 April 2013; 8 May 2013; 14 June 2013; 9 July 2013; 10 July 2013; 11 July 2013; 7 August 2013; 15 August 2013; 20 August 2013; 21 August 2013; 10 October 2013; 4 March 2014; and 5 March 2014.
15. On or around 19 March 2014, AIMPE made an application for a protected action ballot order with the Fair Work Commission. That application was dismissed by Commissioner Cloghan on 11 September 2014 (see: *The Australian Institute of Marine and Power Engineers, West Australia Branch* [2014] FWC 3786)**.**
16. The bargaining representatives had further bargaining meetings on 25 August 2014, 26 August 2014; 3 September 2014; 11 September 2014; 20 October 2014; and 12 October 2015. No progress was made during those meetings.
17. On 5 December 2014, AIMPE lodged a bargaining dispute in the Commission (B2014/1667). Commissioner Williams convened a conference on 19 December 2014. No progress was made at that conference.
18. On 13 October 2015, the bargaining representatives attended a bargaining meeting. At that meeting AIMPE proposed a two year roll-over agreement. That offer included a salary freeze for the life of the agreement.
19. On 14 October 2015, the bargaining representatives attended a further bargaining meeting. At that meeting AMMA rejected AIMPE's offer.
20. In November 2015, the MMAVO put a draft agreement out to all of its seafarers for a ballot. That ballot closed on 12 November 2015. A valid majority was not secured.
21. On 30 January 2016, the MMAVO put a second draft agreement out for a ballot. That second ballot closed on 3 February 2016. Again, a valid majority was not secured.

MMAVO and MMAOL

1. MMA Vessel Operations Pty Ltd (**MMAVO**) and MMA Offshore Logistics Pty Ltd (**MMAOL**) are both wholly owned subsidiaries of MMA Offshore Limited.

2. MMAVO owns and operates vessels and provides labour on hire to clients in the maritime industry.

3. MMAOL provides labour on hire to its clients in the land transport and logistics industry and has no history of employing employees or providing labour hire or other services in the maritime industry.

4. On 18 March 2016, according to the Form F17 filed with the Fair Work Commission MMAOL gave employees a Notice of Employee Representational Rights in relation to an MMAOL Agreement, as distinct from its related entity MMA Vessel Operations Pty Ltd.

5. On 1 April 2016, the Commission requested further supplementary submissions in B2016/1766. The Commission received the final supplementary submissions on 15 April 2016.

6. On 30 April 2016, according to the Form F17 filed with the FWC, five employees who will be covered by the MMAOL agreement voted to approve the MMAOL Agreement.

7. The MMAOL Agreement is similar to that which MMAVO requested its employees to approve in November 2015 and February 2016, and which employees voted not to approve.

8. On 4 May 2016, MMAOL made application to the Commission for approval of the MMAOL Agreement.

9. The Decision to approve the Agreement by the FWC {MMA Offshore Logistics Pty Ltd T/A MMA Offshore Logistics (AG2016/3091) [2016] FWCA 5277} is attached as Appendix AIMPE b1.

10. Mermaid Marine has circumvented the two ballots of its seafarers rejecting its proposed Agreements by corporate malfeasance. By selecting a very small group (five seafarers) employed by a wholly-owned subsidiary, it has defied the views of its broader workforce.

11. AIMPE is concerned that this conduct is contrary to the good faith bargaining requirements in ss 228(1)(e) and (f) of the Act and that MMAVO has failed to disclose information about the MMAOL Agreement that is relevant to the bargaining for a replacement to the 2010 Agreement, contrary to s 228(1)(b) of the Act.

12. AIMPE recommends that the good faith bargaining provisions of the *Fair Work Act 2009* be amended to enable the FWC to restrain a company from conducting a ballot by a subsidiary, in the circumstances described above.

AIMPE Case Study b2 - Sea Swift Pty Ltd

1. The Australian Institute of Marine and Power Engineers have been dealing with Sea Swift for approximately two (2) years now in an endeavor to negotiate and finalise an Enterprise Agreement for the benefit of its members. The previous agreement covering Sea Swift expired on 18 September 2014. The Institute has approximately

24 members employed by Sea Swift, there are approximately One Hundred and Thirty (130) Maritime employees employed by Sea Swift who have a total staff of approximately Three Hundred and Fifty (350). Sea Swift by its own admission operates separate sections being:

(1) Administration
(2) Freight Consolidation/Transfer Facilities(Transport and Logistics)
(3) Maintenance Division (Engineering)
(4) Marine Operations

2. On 30 October 2015 Sea Swift sought approval of an agreement that would cover all of their operations (above) [Ag2015/2789]. Institute members were seeking a separate Maritime agreement so they would have a say in their own area of expertise rather than being stuck in an agreement voted on by all other divisions. Sea Swift would not agree to this. The agreement that covered all parts of the operation was voted on (See attached Ballot Results) even though there was no commonality between sections except they had the same employer. The figures show that maritime employees can never alter the vote on an agreement by Sea Swift.

3. Other issues raised by the Institute during the approval process were which Award was to apply for the purposes of the Better off Overall Test "BOOT". The Act allows an employer, in this case Sea Swift, to just nominate any award they see fit to apply for purposes of the BOOT. Sea Swift run operations interstate, into the Timor Sea and in fact as close as 5nm from Papua New Guinea yet nominated the "Ports Harbours and Enclosed Water Vessel Award 2010" as the option to the BOOT. The Institute believed that the Seagoing Industry Award 2010 was the applicable award. Commissioner Simpson of the Fair Work Commission sided with Sea Swift but the Institute appealed this decision, the Full Bench of the FWC upheld the appeal. Sea Swift then withdrew the application for approval of the agreement even though it had been successfully voted on, all due to the fact that they picked the lowest possible award as the relevant award for the BOOT analysis.

4. The last issue raised during approval was the fact that Sea Swift had two managers act as bargaining representatives during negotiations. One was the Darwin Manager while the other was the Maritime manager (who was also a major shareholder). Simpson C allowed this as there was nothing to show that the agreement was not genuinely agreed to. The Act fails to address what actually is a "Bargaining Rep".

5. AIMPE submits that the Senate Committee should recommend that the Fair Work Act should be amended to provide that no member of senior management in a company should be permitted to be an employee bargaining representative.

c) The use of agreement termination that affect workers' pay and conditions;

AIMPE does not have any submission to make about agreement termination.

d) The effectiveness of transfer of business provisions in protecting workers' pay and conditions;

AIMPE does not have any submission to make about transfer of business.

e) The avoidance of redundancy entitlements by labour hire companies;

AIMPE submits that the practice of converting employee positions into partnership positions has denied all of the relevant workers all of their rights under the Fair Work Act including the right redundancy entitlements. Refer to cases studies a1, a2, a3 and a4.

f) The effectiveness of any protections afforded to labour hire employees from unfair dismissal;

AIMPE submits that the practice of converting employee positions into partnership positions has denied all of the relevant workers all of their rights under the Fair Work Act including the right to seek a remedy in the case of an alleged unfair dismissal. Refer to cases studies a1, a2, a3 and a4.

g) The approval of enterprise agreements by workers not yet residing in Australia that affect workers' pay and conditions;

AIMPE Case Study g1 – CSL Australia Pty Ltd and Inco Ships Pty Ltd

1. CSL Australia Pty Ltd is a local subsidiary of a global shipping entity known as the CSL Group. The group originated as the Canadian Steamship Line. CSL Australia Pty Ltd operates a fleet of ships in various Australian coastal shipping trades. CSL focusses its operations primarily on dry bulk shipping.

2. For many years CSL Australia Pty Ltd engaged Inco Ships Pty Ltd as crew manager and vessel manager for most of its ships on the Australian coast. Under the Workplace Relations Act and subsequently under the Fair Work Act CSL and Inco developed a corporate strategy of negotiating Enterprise Agreements [EAs] with the Maritime Union of Australia [MUA] on a ship by ship basis. That is each EA generally applied to a specific named ship. These EAs applied only to the ratings on board each ship. (Ratings are the seafarers on board ships who work at the direction of the Deck Officers and Engineer Officers).

3. In relation to Officers the strategy developed by CSL and Inco was different. Inco entered into EAs which covered Officers after having the EAs signed by employees overseas. In the case of the EA titled *INCO SHIPS PTY LTD OFFICER COLLECTIVE AGREEMENT 2008 – 2013 CSL THEVENARD* the EA was signed by 4 people each of whom provided an address in Odessa, Ukraine. The representatives of the employer wrote down an address in Odessa, Ukraine. The representatives of the employees wrote down an address in Odessa, Ukraine.

4. In the case of the EA titled *INCO SHIPS PTY LTD OFFICER COLLECTIVE AGREEMENT 2011 MV CSL BRISBANE* the EA was signed for the employer by two managers who are based in Sydney, Australia. However the addresses of the employees who signed the EA have been redacted or blacked out. The names of the two employee representatives are typical Ukrainian names.

5. In the case of the EA titled *Inco Ships Pty Ltd Collective Agreement 2012 Whyalla Transhipment Facility* the employer representative who signed was again Sydney based as was the employer witness. The employee representative who signed the EA wrote down an address in Odessa, Ukraine and this was witnessed by a person who wrote down an address in the Philippines.

6. Inspection visits by AIMPE officials to the CSL ships have consistently revealed that the ships are operated with Deck and Engineer Officers who are sourced from the Ukraine and the Philippines and who AIMPE assumes are working on s.457 or other temporary work visas. AIMPE officials have been told by these guest workers that they are repatriated to their home country [Ukraine or the Philippines] after the completion of their period of duty. That is these guest workers do not live in Australia. They are fly-in, fly-out guest workers who are required to work on conditions below market rates on the ships that compete against the CSL ships. This is unfair for the ship owners and operator which employ Australian citizens and residents and which comply with the Fair Work Act by engaging in genuine bargaining with their employees.

7. AIMPE submits that the EAs which have covered the CSL ships have been produced without any genuine bargaining as provided for under the Fair Work Act. The lack of any requirement in the Fair Work Act that a proposed EA must be signed in Australia by persons who reside in Australia has created a loophole which CSL has been able to exploit.

8. AIMPE submits that the EAs are prepared by the company alone and are signed by employees or prospective employees without any genuine bargaining. Indeed AIMPE suspects that engagement or continuation of employment of these seafarers is predicated on signing the EAs.

9. AIMPE notes that the Fair Work Commission has subsequently adopted a policy of redacting, either by blacking out or by removing the signature page, all information of the representatives who signed the EA. This has been justified on the basis of protecting the privacy of the representatives involved. However it results in a reduced level of transparency and allows for the avoidance of the genuine bargaining provisions of the Fair Work Act. AIMPE is therefore unable to provide more recent information on the practice of having EAs signed overseas.

10. AIMPE has not reproduced the relevant signature pages in this submission as it is not appropriate to identify the particular individuals – they are pawns in the CSL operation. The documents were obtained by AIMPE at the time of publication on the internet by the FWC and have been retained on our files. Of course AIMPE can provide them to the Senate Committee members on a confidential basis should that be required.

AIMPE Case Study g2 - Viva Energy & Inco Ships Pty Ltd

1. For 8 and ½ years, from 2007, the vessel *MT Zemira* performed the bunkering operations in the Port of Melbourne. The vessel was managed by ASP Ship Management and performed the work for Shell and continued to perform the work for Viva Energy after the Shell takeover. Similar arrangements applied in the Port of Sydney with a bunker vessel called *MT Destine.*

2. These vessels were Australian flagged vessels and both were crewed by Australian residents all residing in Melbourne and Sydney respectively. The wages and conditions aboard the vessel were subject to Enterprise Agreements approved by the Fair Work Commission. There was no industrial action during the years of the vessels' operation.

3. On 13th November 2015 AIMPE learnt that Viva Energy had awarded the bunkering contract to Inco Ships Pty Ltd. AIMPE immediately wrote to Inco Ships seeking a meeting to discuss the new vessels and an Enterprise Agreement to cover the Engineers who would be working on the vessel. A copy of the letter from AIMPE to Inco Ships Pty Ltd is contained in Appendix AIMPE g2 and marked "**Attachment 1"**

4. At no stage did Inco Ships Pty Ltd agree to meet to discuss the new vessels or an Enterprise Agreement.

5. On Thursday 7th January 2016, the *ICS Allegiance*, under the flag of the Bahamas, steamed into the Port of Melbourne. AIMPE was the first Union on board that day to meet and discuss with Engineers the issues surrounding it. The vessel arrived with an Australian Master and First Officer; the other 13 crew members were all from the Philippines. Despite reports that the vessel would be crewed by Australians the Engineers on board, all with s457 visas, were expecting to be offered ongoing employment on the vessel. Inco's own Facebook page also outlined that the vessel would be Australian crewed. A copy of the Crew Report for the *ICS Allegiance* is contained in Appendix AIMPE g2 and marked "**Attachment 2"**

6. The same situation had occurred in Sydney with the *MT Destine* being replaced by the *ICS Reliance* on 22nd December 2015. Subsequently in late 2016 the *ICS Allegiance* voyaged to Sydney for dry-docking and the *ICS Reliance* voyaged to Melbourne to maintain bunkering services in Melbourne. The *ICS Allegiance* has remained in Sydney since the dry docking and the *ICS Reliance* has remained in Melbourne – so the vessels have swapped ports.

7. On 10 December 2015, Inco Ships Pty Ltd, lodged an application with the *Fair Work Commission for* the approval of an Enterprise Agreement titled the Inco Ships Pty Ltd Officer Collective Agreement 2015 Shipping Services. The accompanying Statutory Declarations for the Agreement Application revealed that voting for the Agreement took place while the vessels were at Sea. Of the 16 employees who voted in favour of the Agreement there were 9 Marine Engineers, 2 from Ukraine and 7 from the Philippines, all on s.457 visas.

8. AIMPE lodged an objection to the Approval of the Agreement. The matter number is AG2015/6927. To date there has been 2 hearings including an Appeal from the applicant. The Hearings and decisions to date have only dealt with the matter of Standing, which AIMPE has been successful in being granted Standing to be heard.

9. The substantial matters, including the Better off Overall Test, observance of the proper notice periods including the access period, the explanation of the Agreement clauses particularly in light of the vast majority being foreign residents with English as a second language, the distribution and content of the Notice of Employee Representational Rights, the inclusion of a Manager as a Bargaining Representative, the issue of Employees being fairly chosen, and Good Faith Bargaining are all issues which AIMPE submits fail the provisions of the *Fair Work Act*, have yet to be heard. The applicant, Inco Ships Pty Ltd, has been lax in pursuing its own application and was advised by the Fair Work Commissioner on 7th October 2016, that the matter risks being dismissed "for want of prosecution". The email dated 7 October 2016 from the Fair Work Commission is contained in Appendix AIMPE g2 and marked "**Attachment 3".**

10. At the Hearing on 3rd March 2016, AIMPE brought to the attention of the Commission a matter of Public Importance relating to the remittance of monies to an Employment Agency in the Philippines. Contained in Appendix AIMPE g2 and marked "**Attachment 4"** is the Second Statement of Samuel Littlewood, of AIMPE,

who met a Filipino Engineer on board the *ICS Reliance* on 2nd February 2016. The Filipino Engineer stated to Mr Littlewood that he was working under a temporary work visa [s.457] and had been engaged on a salary of $119,000 but was only receiving $109,000 as the remainder was being paid to an Employment Agency in the Philippines.

11. That Employment Agency is Britmark and the address is 1402 1402A 14/F RM803 Ermita Center Bldg 1350 Roxas Blvd, Bgy 668, Zone 072 Ermita, Manila, Philippines. The source of this address is from the Britmark Shipping Services Website and is contained in Appendix AIMPE g2 and marked "**Attachment 5".**

12. The physical address of Inco Ships Manila Office is: 14/F Suite 1402 Ermita Center Building 1350 Roxus Boulevard, Ermita, Manila. The source of this address is from the Inco Ships Website and is contained in Appendix AIMPE g2 and marked "**Attachment 6".**

13. The address of the Employment Agency and Inco Ships are identical. I am advised that payments of commissions to overseas Employment Agencies are forbidden by Australian Immigration Law.

14. When Mr Littlewood was cross examined about his Statement concerning this matter it was not disputed that the payments were being made. It was put to him that the remittance was in accordance with the national requirements of Filipino nationals when working in Australia. Page 13 of 63 pages of The Transcript of the Fair Work Commission proceedings dated 3 March 2016 recording this is contained in Appendix AIMPE g2 and marked "**Attachment 7"**

15. AIMPE submits that Viva Energy have engaged Inco Ships Pty Ltd in an attempt to avoid the requirements of the *Fair Work Act 2009*. Inco Ships Pty Ltd did all they could to force though an Enterprise Agreement that provides for lower pay and conditions than the Employees would be entitled to under the applicable Award, the *Seagoing Industry Award 2010*. Inco Ships acted to ensure that the vast majority of employees subject to the Agreement were foreign residents employed on s.457 Visas. In their rush to ensure the Agreement was completed before the vessel and its employees arrived in Australia, where they could obtain assistance, the company has made several procedural mistakes which, on every occasion are pointed out to them by the Fair Work Commission, they seek to resolve by filing Statutory Declarations. Those Statutory Declarations are made to cover their mistakes and are yet to be tested via Cross Examination.

16. Inco Ships Pty Ltd is now ignoring the Fair Work Commissions requests and is at best deploying delaying tactics to avoid scrutiny of their Enterprise Agreement and employment practises. This is resulting in the continued exploitation of s.457 Visa holders and preventing Australian residents from Australian work.

17. AIMPE recommends that the Fair Work Ombudsman should examine and investigate Inco Ships Pty Ltd employment practises, hiring practises, the relationship to an

Overseas Employment Agency of the same address and the extent to which foreign employees are being made to pay commissions with Inco Ships Pty Ltd consent to these foreign employment agencies.

18. AIMPE further recommends that the *Fair Work Act 2009*, be amended so that Enterprise Agreements cannot be made outside of Australia and should be signed by Employees with an Australian residential Address.

AIMPE Case Study g3 - Huon Aquaculture

1. Huon Aquaculture operates a live fish-carrier vessel named Ronja Huon. The vessel is located in the D'Entrecasteaux Channel off Bruny Island south of Hobart, Tasmania. The vessel is registered under the Norwegian International Shipping (NIS) register. The NIS is a second register intended to compete against Flag of Convenience registers like Panama, Liberia and the Marshall Islands. Unlike Norwegian registered vessels, NIS vessels are not required to have a full Norwegian crew.

2. The current crew of the vessel comprises:
   1 Master (Norwegian);
   1 First Mate (Norwegian
   1 Chief Engineer (Norwegian);
   1 Trainee Engineer (Australian);
   3 Able Bodied Seamen (Australian).

3. AIMPE understands that a similar complement is on the other swing. The crews work for several weeks at a time and live on board for the duration of their 'swing'. The crew is then relived by their opposite number. AIMPE further understands that the Norwegian crew members are repatriated to Norway during their leave swings. That is these temporary workers are fly-in, fly-out guest workers.

4. The Enterprise Agreement which covers the employees (*Huon Aquaculture Company Pty Ltd T/A Huon Aquaculture- M/V Ronja Huon Multi-Enterprise Agreement 2015*) was approved by the Fair Work Commission on 22 June 2015, commenced operating from 29 June 2015 and its nominal expiry date is 21 June 2019. There are two companies bound by the Multi Enterprise Agreement – Huon Aquaculture Company Pty Ltd and Solvtrans Rederi AS Australia Branch. The agreement was signed on behalf of the employees by a person who provided an address in Norway.

5. Solvtrans Rederi AS have a number of other vessels operating outside the EU including in Canada (1) and Chile (3) however those vessels are Canadian and Chilean registered. Our laws currently allow for this ship to be flagged in Norway.

6. This matter is disturbing because it involves the intentional making of the agreement with a small workforce with the sole intention of locking down manning and conditions in a workplace. Such agreement tends to erode terms and conditions in the industry. In a nutshell, this agreement was made with a temporary workforce with visa workers voting on this agreement as an integral part of their sponsorship and employment arrangements before they had actually commenced any work in Australia.

h) The extent to which companies avoid their obligations under the Fair Work Act 2009 by engaging workers on visas;

AIMPE Case study h1 - CSL Australia

1. In April 2016, AIMPE was involved in an unfair dismissal application on behalf of a member who had been made redundant as part of the withdrawal of the CSL Melbourne from the Australian fleet. The redundancy followed a familiar pattern for CSL and only reaffirmed CSL's strategy of reducing the number of Australian marine engineers working on its vessels while retaining their cohort of 457 visa holders.

2. The objection to the redundancy focused on the fact that the AIMPE member was not a regular engineer on board the *CSL Melbourne*. The person concerned was permanently appointed to another CSL ship as an Engineer Officer. This appointment had been made by his employer CSL Australia after CSL terminated the crew management contract it had with Inco Ships Pty Ltd. The crew manager Inco Ships was effectively acting as a labour hire firm although it also had a vessel management contract for most of the CSL ships operating in Australia.

3. The transfer of the particular Engineer to the *CSL Melbourne* involved a promotion in rank but it was temporary, and only very shortly lived. Within weeks CSL announced the withdrawal of the vessel from its Australian operations. His previous permanent position on the other CSL ship was filled by an Engineer working on a s.457 visa.

4. CSL argued that there were no more available positions in their fleet with the removal of the *CSL Melbourne*, despite the AIMPE member having been engaged and appointed to a permanent position another CSL ship dating from the time terminated the contract with the previous crew manager. AIMPE submits that CSL orchestrated the redundancy of an Australian citizen by 'promoting' and transferring him to a vessel which in all likelihood it knew was going to be withdrawn from service.

5. Given the remote likelihood of re-instatement in such unfair dismissal proceedings, AIMPE negotiated a settlement to the unfair dismissal application, executed a terms of settlement document, and discontinued its application.

AIMPE Case Study h2 - Jan De Nul

AIMPE is aware that some operators have structured their contracting arrangements so that companies which have Enterprise Agreements with AIMPE are only contracted to supply junior Engineer Officer personnel whilst foreign 'Ships Engineers' presumably working under s457 temporary work visas are allocated all of the senior Engineer Officer positions. The s457 temporary visa scheme was intended to ensure that the foreign personnel were engage for a short period and that qualified Australian personnel would be trained on the specific equipment. This has been exploited by a number of companies to avoid the obligations of the Fair Work Act.

1. In 2013 AIMPE undertook four visits to the Wheatstone dredging project off Onslow in West Australia in order to speak with members engaged on the dredges operated by Jan De Nul (JDN). During the course of these visits AIMPE spoke with personnel employed by JDN and with personnel employed by a subcontractor Australian Offshore Solutions (AOS) and discovered evidence of significant underpayment of foreign workers.

2. AIMPE uncovered evidence that some of the foreign engineers who are employed on dredges in the Wheatstone Project in Western Australia had been paid at rates of less than $8.00 per hour. AIMPE made a written complaint to the Fair Work Ombudsman seeking that the FWO take action over the apparent gross underpayment of foreign Chief Engineers and others who are employed on dredges in the Wheatstone Project in Western Australia. A Senior Fair Work Investigator was appointed to undertake investigations into the matter.

3. AIMPE understands that at least some of the foreign engineers on the Wheatstone Project were employed under a foreign Agreement called the *Collective Agreement for Posted Lithuanian Seafarers employed to Belgium Company Jan De Nul*. The Lithuanian Seamen's Union negotiated the Agreement with a company called JSC Novikontas SCM. The rates of pay and conditions under the Agreement were well below the rates and conditions applicable to Australian Engineers. AIMPE was provided with a copy of the Lithuanian Agreement. AIMPE supplied a copy of the Lithuanian Agreement to the FWO.

4. AIMPE believes that these workers should not have been paid under a foreign Agreement while they were working in Australia and that this was a prima facie breach of the Fair Work Act.

5. The 2011 rates of pay in **Euro** under that **Lithuanian Seafarers Collective Agreement** were as follows:

CLASSIFICATION	€ p.a.	€p.6w
Master	24414	2817
Chief Engineer	23200	2677
Chief Officer	20869	2408
1st Engineer	20869	2408
2nd Officer	18269	2108

6. The rates of pay in the **Lithuanian Seafarers Collective Agreement** were stated as being per 6 weeks worked. The equivalent rates of pay in **Australian dollars**, based on an exchange rate of 1A$ = €0.7019 at the time, were as follows:

CLASSIFICATION	A$ p.a.	A$ p.w.	A$ p.h.
Master	34785	669	7.96
Chief Engineer	33055	636	7.57
Chief Officer	29734	572	6.81
1st Engineer	29734	572	6.81
2nd Officer	26029	501	5.96

7. The above calculation of the hourly rate was based on the normal dredging industry work pattern of 7 shifts per week of 12 hours per shift – 84 hours per week. So this was effectively an average hourly rate which disregarded penalties and overtime.
8. AIMPE did not have access to the pay records of Jan De Nul or its contractors and so this analysis was based on the reading of the Collective Agreement.
9. By comparison the then current rates of pay under the relevant Australian Modern Award – the **Dredging Industry Award 2010** were as follows:

CLASSIFICATION	A$ p.a.	A$ p.w.	A$ p.h.
Master	113,828	2189	26.05
Chief Engineer	113,828	2189	26.05
Chief Officer	108,680	2090	24.88
1st Engineer	108,680	2090	24.88
2nd Officer	97,344	1872	22.29
2nd Engineer	97,344	1872	22.29
Electrical Engineer	108,680	2090	24.88

10. If the foreign (s.457 visa?) Chief Engineers working on the Jan De Nul dredges were being paid the rates contained in the 2011 Lithuanian Collective Agreement extracted above then they were being paid far below the Australian Award rates of pay.
11. The rates of pay which were contained in the FWC approved **Enterprise Agreements** which were then applicable to Australian dredging operations were:

CLASSIFICATION	$ p.a.	$ p.w.	$ p.h.
Master	203051	3905	46.50
Chief Engineer	203051	3905	46.50
Chief Officer	183712	3533	42.05
1st Engineer	183712	3533	42.05
2nd Officer	161195	3100	36.90
2nd Engineer	161195	3100	36.90
Electrical Engineer	183712	3533	42.05

Extracted from *AOS AIMPE Contract Propelled Enterprise Agreement 2013* AE402599

12. If the foreign (s.457 visa?) Chief Engineers were being paid at the rates set down in the Lithuanian Seafarers Collective Agreement then they were being paid at less than one third of the minimum rate prescribed by the relevant FWC Modern Award and around one sixth of the rate in the relevant FWC approved Enterprise Agreement.
13. It is a matter of grave concern to AIMPE that the rates of pay applying to the foreign Engineers on the Jan De Nul dredges appear to be so grossly below the relevant industrial instruments of the Fair Work Commission.

14. AIMPE called on the Fair Work Ombudsman to immediately take steps to verify the level of payments actually being made to the foreign workers before they were repatriated overseas and enforcement procedures became much more difficult.

15. AIMPE understands that the FWO subsequently did an audit of the JDN books for payments made in one month. In this month the FWO apparently found no evidence that JDN had breached the Fair Work Act.

AIMPE Case Study h3 - Labour market manipulation in Marine Dredging

1. The dredging industry in Australia is dominated by several foreign companies who have secured most of the big dredging contracts around Australia in recent years. These companies include Jan De Nul, Van Oord, Dredging International and Boskalis.

2. A program of visits to dredges since January 2013 by AIMPE officials has revealed a pattern of labour market manipulation by the dredging companies (see attachment). The companies have employed and are still employing a majority of foreign engineers even though there are a significant number of Australian marine engineers who are available for work immediately.
3. On some of the larger dredging vessels the dredging companies are employing a full complement of foreign engineers (6 engineers per swing) and merely employing a token number of Australian engineers. The Australian engineers have reported that they are marginalised in the workplace and explicitly prohibited from carrying out the operations, repairs and maintenance tasks that are the normal duties of qualified marine engineers.
4. In addition, the dredging companies have no program to provide familiarisation to the Australian engineers with the particular layout of machinery and systems of operation.
5. There are some vessels where a mix of Australian and foreign engineers are used on a co-operative basis – but this is a minority of cases.
6. Some smaller vessels e.g. small split hopper vessels have been observed to have a full complement of Australian engineers (2 engineers on these vessels). However the labour market manipulation here is that the companies are employing Class 1 Engineers when the vessels only require a Class 3 Engineer qualification. This effectively excludes lower qualified Australian engineers from employment and reduces the supply of higher qualified Australian engineers. This means that the companies can argue that there are insufficient Australian engineers with Class 1 qualifications to fill positions on the larger, more powerful dredges which have regulatory requirement for the higher qualifications.
7. The visa status of these foreign engineers has not been confirmed. They may be using the s.457 visas or they may be following the example of Allseas and using no visas at all. The Allseas case effectively exposed a maritime version of "terra nullius" for workers in Australia's EEZ.

Vessel	**Company/Dredge Type**	**Port**	**Date**	**Engineers**
Al Mahaar	DI non-propelled cutter	Gladstone	23 01 13	– 6 Belgian
509	DI booster station	Gladstone	23 01 13	– 1 Belgian
Castor	VO non-propelled cutter	Gladstone	23 01 13	– 6 Dutch / Lith.
Malmo	VO booster station	Gladstone	23 01 13	– 1 Dutch
Rotterdam	VO propelled trailer	Gladstone	24 01 13	– 6 Lithuanian
Baldur	Bk non-propelled cutter	Darwin	05 02 13	- mixed
Pieter Caland	VO propelled split hopper	Darwin	06 02 13	– 2 Australian
Hippopotes	VO non-propelled cutter	Darwin	06 02 13	- Australian
Athena	VO propelled cutter suction	Darwin	06 02 13	– 6 Dutch/Lith.
Simson	VO propelled cutter suction	Darwin	06 02 13	- Australian

Vox Maxima	VO propelled trailer suction	Darwin	06 02 13 - 6 Dutch/Lith.
Cornelius Lely	VO propelled split hopper	Darwin	07 02 13 - 2 Australian
Queen of the Netherlands	Bk propelled trailer suction	Darwin	07 02 13 - mixed
Pagadder	DI Propelled split hopper	Broome	19 04 13 - 2 Australian
Sloeber	DI Propelled split hopper	Broome	21 04 13 - 2 Australian
Santiago	JDN Propelled split hopper	Dampier	09 05 13 – 1 Croatian 1 Aust
Trinidad	JDN Propelled split hopper	Dampier	09 05 13 - 1 Croatian 1 Aust
Ambiorix	DI propelled cutter suction	Onslow	14 05 13 – 8 Belgian 6 Aust.
Sebastiano Caboto	JDN propelled trailer suction	Onslow	15 05 13 – 6 Croatian 1 Aust
Trinidad	JDN Propelled split hopper	Onslow	15 05 13 - 1 Croatian 1 Aust
Victoria	JDN Propelled split hopper	Onslow	15 05 13 - 1 Croatian 1 Aust
Alamo	Bhagwan multi-cat	Onslow	15 05 13 – 1 Australian

Key
DI – Dredging international
VO – Van Oord
Bk – Boskalis
JDN – Jan de Nul.

AIMPE Case study h4 –
Guest workers on the Wheatstone Dredging Project

1. AIMPE became aware of a significant number of guest workers on the Wheatstone Dredging Project off Onslow, WA. AIMPE assumed that these persons were working under s.457 visas or similar temporary work visa but AIMPE is not in a position to verify the status of these individuals.
2. As an example, Dredging International Australia Pty Ltd had a number of dredges working on the Wheatstone Project. AIMPE understands that the following people in this category were employed on one of the larger dredges in senior engineering positions:

Chief Engineer	Belgian [name withheld]
Chief Engineer	Belgian [name withheld]
1st Engineer	Belgian [name withheld]

1st Engineer	Belgian [name withheld]
1st Engineer	Belgian [name withheld]
1st Engineer	Belgian [name withheld]
Electrical Engineer	Belgian [name withheld]
Electrical Engineer	Belgian [name withheld]

These positions and in particular the Chief engineer and the 1st Engineer positions are the highest paid positions in the Engineering Department on the dredge.

3. By contrast all of the following people are Australian citizens or Australian residents but are employed in the junior positions:

2nd Engineer	Australian [name withheld]
2nd Engineer	Australian [name withheld]
2nd Engineer	Australian [name withheld]
2nd Engineer	Australian [name withheld]
3rd Engineer	Australian [name withheld]
3rd Engineer	Australian [name withheld]

These positions are the lowest paid positions in the Engineering Department on the dredge.

4. In addition the following Australian citizens or Australian residents are employed in equivalent positions:

Electrical Engineer	Australian [name withheld]
Electrical Engineer	Australian [name withheld]

5. On the face of it, the company adopted employment practices which resulted in systemic discrimination against Australian citizens and Australian residents. Only in the electrical engineer category was any level of equivalence adopted.

6. A second example also came to the attention of the AIMPE on board another large dredge in the Wheatstone Project - also operated by Dredging International. A similar dichotomy was implemented. All the most senior Engineer positions were filled by guest workers while Australian Engineers were only engaged in the lower paid Engineering positions.

7.

AIMPE Case study h5

Silja Europa - Estonian guest workers on accommodation ship

1. The *Silja Europa* is a large Passenger/Ro-ro cargo vessel built in 1993. It is registered under the Estonian flag. AIMPE visited the vessel in late 2014 at the wharf at the Port of Barrow Island where it was berthed. The Silja Europa was being used for an extended period to provide accommodation for construction workers on Barrow Island.

2. Being berthed at the wharf throughout 2015, the ship was decidedly within Australian territorial waters and subject to all the laws of Australia, inclusive of our migration laws. It was not on an international voyage – it was providing supplementary accommodation services to personnel working in Australia. Despite this the vessel was operated by a

crew including a large proportion of foreign Engineer officers. There were Estonian Nationals in the roles of Chief Engineer, First Engineer, Electrical Engineer, Electrician, Refrigeration Engineer, Systems Engineer, 2 x Systems Technicians and an Automation Engineer. By contrast the Australian Engineering/Electrical complement on the *Silja Europa* was limited to a Supernumerary Chief Engineer, 4 x Second Engineers and an Electrical Engineer. With the exception of the Automation Engineer all of the other roles could have been filled by Australian Engineers after a short transition/hand-over period. This did not happen.

3. AIMPE applied to the Department of Immigration & Border Protection under Freedom of Information laws to establish the visa status of the Estonian Nationals and initially AIMPE received the following truly astonishing response from the Department: *"I have not been able to locate any record in relation to the vessel the Silja Europa IMO: 891805 in any of the department's databases. I have been unable to identify the employer about whom you are seeking 457 sponsorship information."*

4. Subsequently the Department advised that it had done a more thorough check and had found "…that the sponsor of the Silja Europa has complied with all sponsorship requirements and we are not aware of any allegations the 457 sponsors or visa holders are in breach of immigration requirements." Accordingly the vessel remained tied up to the wharf at Barrow Island for over a year with foreign Engineers in all of the senior roles.

5. By employing guest workers under s.457 visas the operator was effectively able to deny employment to the Australian Engineer who otherwise could have performed this work.

i) Whether the National Employment Standards and modern awards act as an effective 'floor' for wages and conditions and the extent to which companies enter into arrangements that avoid these obligations;

AIMPE Case study i

Jan De Nul reduce pay and conditions and ignore Modern Award relativities

1. The Belgian dredging company Jan De Nul (JDN) lodged an application with the Fair Work Commission in late 2016 for a proposed Enterprise Agreement which would cut rates of pay for some Engineer Officer classifications by over $100,000. JDN does not have any current dredging Agreements with AIMPE. As a consequence the Fair Work Commission has declined AIMPE standing to make any submissions about the proposed EA.

2. The rates of pay now being proposed by JDN for large self-propelled dredging plant are:

Group 1	JDN	Market
Chief Engineer	$130,000	(compared with $247,593/$228,148)
1st /Engineer	$117,000	(cf. $206,419)
2nd /Engineer	$106,000	(cf. $181,119)
Electrician	$106,000	(cf. $206,419)

(in the above table the JDN rates are those proposed by JDN but not yet approved by the Fair Work Commission. The market rates are the rates contained in other Enterprise Agreements previously approved by the Fair Work Commission)

3. The rates of pay now being proposed by JDN for smaller dredges & support vessels:

Group 2	JDN	Market
Chief Engineer	$111,000	(cf. $228,148)
1st /Engineer	$106,000	(cf. $197,682)
2nd /Engineer	$100,500	(cf. $181,119)
Electrician	$100,500	(n.a.)

(in the above table the JDN rates are those proposed by JDN but not yet approved by the Fair Work Commission. The market rates are the rates contained in other Enterprise Agreements previously approved by the Fair work Commission)

4. AIMPE wrote to the Fair Work Commission seeking access to the supporting documentation filed by JDN and foreshadowing AIMPE's objection to the proposed Agreement. It goes without saying that JDN did not enter into any bargaining with AIMPE about this proposed Agreement.

5. At the same time JDN filed with the FWC and application for a separate EA with the MUA. Analysis of the salary figures in the EA indicate that the parties have agreed to a 10% reduction is rates of pay. The key salary figures in the proposed JDN MUA Propelled Dredging Agreement 2016 are:

Group 1 – Large Propelled dredges		
Pump operator	$159,203	(compared with $176,892 in 2012-16 JDN MUA EA)
Asst. pump operator	$147,696	(cf. $164,107)
Crane Operator	$146,201	(cf.$162,445)
Greaser / GPH	$141,942	(cf. $157,713)

Group 2 – all other dredging and support vessels		
Bosun	$154,118	(cf. $171,242)
Crane Operator	$141,537	(cf.$ 157,263)
Greaser / GPH	$137,412	(cf. $152,680)

6. However even though a 10% reduction in pay was agreed, the rates of pay are all above the rates that JDN proposed [without any negotiation] to apply to Officers. In other words JDN propose to pay the lowest ranked of all of the ratings classifications more than every one of the Engineer classifications – including the Chief Engineer. Put another way the Officers in charge of the dredge, the machinery and the personnel working on the dredge are proposed to be paid less than the lowest paid, least qualified and least skilled workers on the dredges.The JDN/MUA Enterprise Agreement was approved by the Fair Work Commission in September 2016.

7. Needless to say AIMPE sought to oppose the Officer Enterprise Agreement being approved by the FWC. However the Fair Work Commission declined to give AIMPE standing to make submissions in relation to an instrument which would, if approved, drastically alter the existing conditions for Marine Engineers – the category of employees covered by the AIMPE for 136 years.

8. The AIMPE does not have a pre-existing Enterprise Agreement with JDN as JDN has utilized a contractor Australian Offshore Solutions (AOS) as the employer for Australian Engineers on their dredges. Coupled with the fact that we were not a bargaining representative in the so-called negotiations, the FWC determined that AIMPE has no standing and further, the Commission declined to exercise its discretion to grant leave for AIMPE to be heard. In contrast the AMOU was found to have standing arising from their existing Enterprise Agreement with the company.

9. AIMPE is of the view that the proposed JDN EA does not even meet the better off overall compared to the Dredging Industry Award 2010. However because the Fair Work Commission has refused AIMPE leave to appear, AIMPE is being prevented from arguing that the proposed EA does not meet the BOOT and should not be registered. The relevant salary figures are summarised in the following table:

Classification	Modern Award	Proposed JDN EA
Chief Eng split hopper	$123,073.60	$111,832.50
First Eng split hopper	$118,846.00	$106,795.00
2nd Eng/Elec Eng split hopper	$105,248.00	$101,253.75
Chief Eng all other vessels	$123,073.60	$106,795.00
First Eng all other vessels	$118,846.00	$101,253.75

j) Legacy issues relating to Work Choices and Australian workplace agreements;

AIMPE makes no submission in relation to legacy issues arising from the Work Choices legislation and from Australia workplace agreements.

k) The economic and fiscal impact of reducing wages and conditions across the economy; and

Balance of Payments

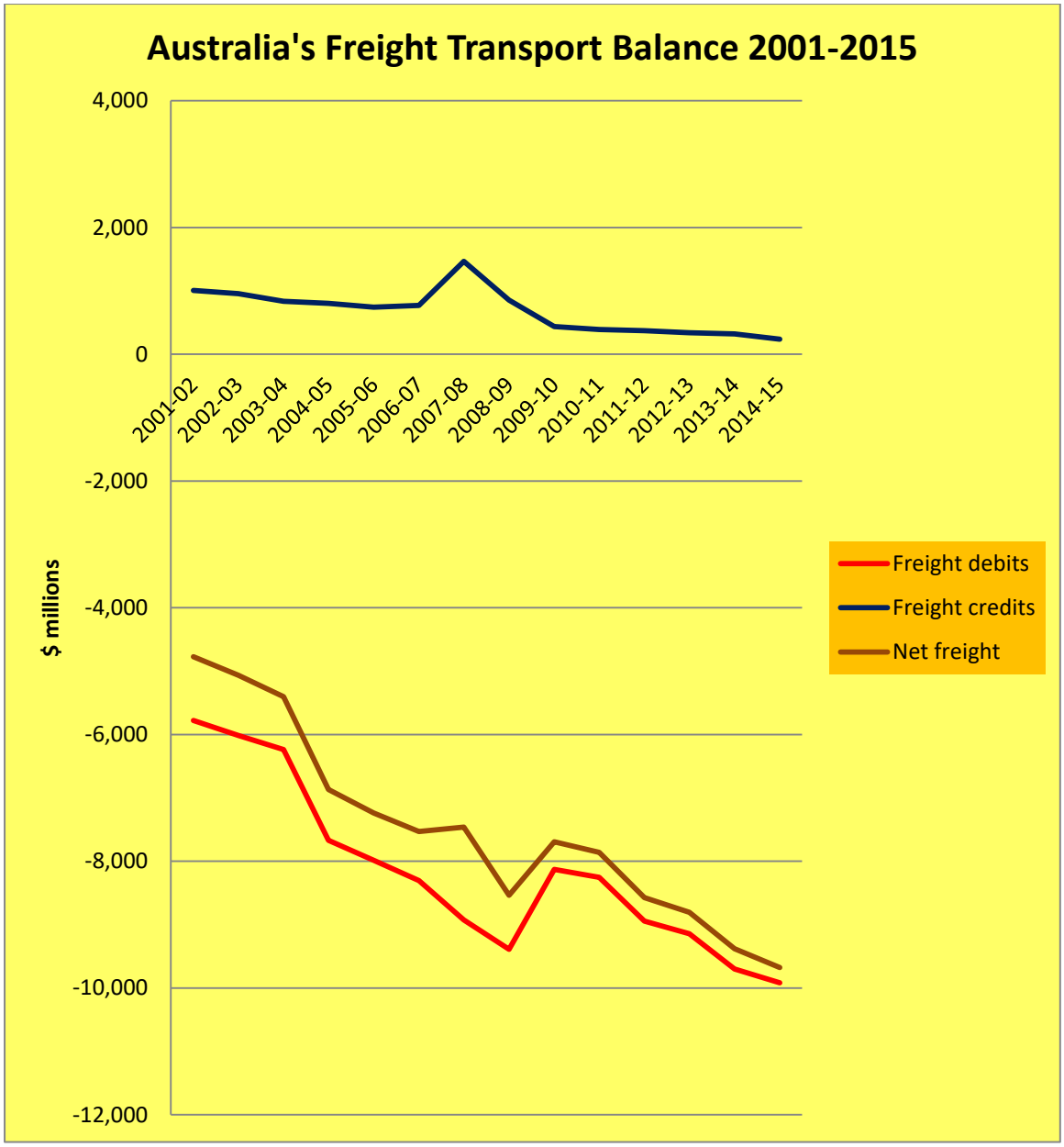
AIMPE submits to the Committee that there are significant macroeconomic consequences from the lack of Australian involvement in Australia's massive shipping task. Australia is spending almost $10 billion per annum on freight transport services – mainly shipping costs. This is a constant drain on the nation's international balances as can be seen in the graph on the following page.

The Australian Bureau of Statistics figures show an inexorable decline in the freight services credits [the income earned by Australian shipping service providers] after a spike in the heady days before the global financial crash. The peak earnings of over $1,400 million in 2007-08 dropped below $900 million in 2008-09 and have dwindled to less than $300 million over the six years since then. This decline was probably accelerated by the high value of the Australian dollar which caused many Australian manufacturers to reduce output or to shut down operations altogether. This has been one downside of the "resources boom". Much of Australia's coastal shipping has serviced the needs of Australian manufacturing – transporting raw materials to processing plants. The high Australian dollar caused by the resources boom effectively made many Australian goods uneconomic when compared to overseas imports.

Australian Freight Transport Services 2006-07 – 2014-15 ($ millions)

Australia	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Freight debits	-8,303	-8,924	-9,388	-8,128	-8,251	-8,945	-9,144	-9699	-9916
Freight credits	771	1,464	852	438	390	372	341	320	239
Net freight	-7,532	-7,460	-8,536	-7,690	-7,861	-8,573	-8,803	-9379	-9677

Source: Extracted from *ABS International Trade in Goods and Services, 5368.0*



Source: Extracted from *ABS International Trade in Goods and Services, 5368.0*

On the other side of the ledger, freight debits reduced to just over $8,000 million in 2009-10 as the world economy contracted but has climbed back to just under $10,000 million in 2014-15. $10 billion is a larger drain on the balance of payments whichever way it is considered. Australia needs to have a debate about whether we can accept seeing this quantum of money flowing out of Australia every year to pay for shipping services provided by foreign companies.

l) Any other related matters.

1. AIMPE advises that large numbers of s457 temporary work visas have been issued over the last decade for the occupational category of 'Ships Engineer' (ANZSCO 231212). Some employers in the Australian maritime industry appear to have developed their operating models based on the utilisation of personnel working under s457 temporary work visas. One AIMPE official was advised by one foreign 'Ships Engineer' that he had worked in Australia continuously for over 10 years on a series of s457 temporary work visas. This individual and the others in the same category who work for the same employer are flown to their home country after the completion of each period of work on the ship. They do not live in Australia. This can only be described as a situation where guest labour is being used to systematically deny qualified Australian personnel the right to work in their own country. See AIMPE Case study h1 – CSL Australia. See also AIMPE Case study h2 – Jan De Nul.

2. AIMPE has uncovered instances where foreign citizens presumably in possession of s457 temporary work visas have approved of Enterprise Agreements and signed those Agreements in their home country – e.g. the Ukraine. AIMPE has objected to these Enterprise Agreements but the Fair Work Commission has approved them over AIMPE's protest. See AIMPE Case study g1 – CSL Australia and Inco Ships. See however AIMPE Case study g2 – Viva Energy and Inco Ships where the company has failed to receive approval from the Fair Work Commission.

3. AIMPE advises that at least one operator in the maritime industry has used foreign 'Ships Engineers' presumably working under s457 temporary work visas and paid them less than the rate of pay for the unskilled ratings whom the 'Ships Engineers' work alongside and supervise. AIMPE lodged a complaint with the Fair Work Ombudsman about one instance of such gross underpayment however by the time the FWO made a visit to inspect the books they found that the books appeared to demonstrate compliance with the going rates of pay. The same operator has now sought to entrench this inversion of the long-standing skills and responsibilities based relativities of the Australian workplace [as reflected in the relativities of the relevant Modern Award] by applying for approval of an Enterprise Agreement which AIMPE suspects was signed by foreign personnel presumably in possession of s457 temporary work visas. However the Fair Work Commission has also consented to a Confidentiality Order which prevents AIMPE ascertaining the details of the application. By this decision the FWC is pulling a shroud of secrecy over what was intended to be an open, transparent process and bringing in to question Australia's commitment to free collective bargaining and the right to organise. See AIMPE Case study i – Jan De Nul (JDN).

4. AIMPE submits that the Senate Committee should recommend that the Fair Work Act should be amended to prohibit the granting of confidentiality orders in relation to applications for approval of Enterprise Agreements that are signed by employees working under temporary work visas.