



# **AIMPE**

Australian Institute of  
Marine and Power Engineers  
**HEAD OFFICE**

13 April 2018

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Australian Competition and Consumer Commission  
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**RE: Exclusive dealing notification N10000453 lodged by Gladstone Ports Corporation Ltd – Interested party consultation.**

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On behalf of AIMPE members, AIMPE makes the following submissions regarding the above notification.

**Standing of Interested Party:**

The Australian Institute of Marine and Power Engineers (AIMPE) is a registered employee organisation under the Fair Work Act (2009) and has participated in the ACCC deliberations in relation to previous notifications affecting competition in Port Curtis.

The Australian Institute of Marine and Power Engineers (AIMPE) is the union representing the industrial and professional interests of marine and power engineers in Australia.

Members of AIMPE work on tugboats, ferries, dredges, offshore oil and gas industry vessels, MODUs, cargo vessels and the power generation industry.

AIMPE is affiliated to the ACTU, Australia's peak union body, and to the International Transport Workers Federation (ITF). AIMPE is also affiliated with the Nautilus Federation which represents maritime officers around the world.

AIMPE negotiates Enterprise Agreements on behalf of members and represents members in individual and collective disputes. AIMPE also acts to maintain professional standards in the maritime industry.

Specifically, the AIMPE is covered and bound by enterprise agreements covering national and local towage operators in Australian ports. In particular, the AIMPE is a party to the successive (separate) Fair Work Commission registered enterprise agreements that cover Engineers employed with Smit Lamnalco Towage (Australia) (SLTA) – the only employer of tug crews in Port Curtis.

AIMPE has actively represented members in deliberations relating to aggregate crew numbers, maintenance, training, and work practices (i.e a separate document that codifies hours of work and rest in rosters, including towage/ship assist, and leave parameters) in discussions with SLTA post settlement of the industrial instruments.

### **Overall Submission:**

The AIMPE opposes the Commission allowing the notification.

The foundation for the opposition to allow the notification is supported by the detrimental effect on employment and crews on the vehicle of the tendering process and subsequent contractual relationship created by the exclusive licence as it:

- Restricts and impedes rights and freedoms to bargain with the incumbent employer under the Fair Work Act (2009) and international conventions on collective bargaining and rights of workers;
- Encourages corporate schemes of employment avoidance to win tenders;
- Stonewalls any increases to towage assets and crews to address growth and safety in a port; and,
- Creates an uneven pricing base of organised and new entrant operators.

Consistent with previous submissions, port corporations and authorities should not issue exclusive licences for harbour towage operations (including LNG terminal towage) based on tenders that restrict the foregoing. Rather, they should either issue conditional non-exclusive licences or allow open port arrangements that are subject to demonstrated compliance with stringent safety and operational standards/parameters to ensure the safety of vessels, crews, cargo, port and marine environment.

To support employee entitlements and protections achieved through collective bargaining under either scheme, arrangements must mandate towage operators to recognise collective bargaining and rights of workers and the conditions that exist in the port to ensure, as far as possible, a level playing field in crewing factors for the operation of tugs in a port.

### **Changes to the Australian Towage Market**

The past 10 years the following changes have occurred and have significant impact on the Australian towage industry:

- Registration of tugs under the Marine Safety (Domestic Commercial Vessel) National Law Act 2012;
- New Marine Towage Award 2010 removing legacy hours and conditions from all ports;
- Employment avoidance schemes (partnerships) grow in private resource ports of Port Hedland, Hay Point, Gorgon and Wheatstone;

- Smit subcontract their towage services to Svitzer Australia in the competition ports in Brisbane, Melbourne, Sydney and Newcastle but retain the right to price and charge for the subcontracted services;
- Stannard Marine Pty Ltd Darwin operation (Coastal Tug and Barge) transfer the provision of towage services to Svitzer Australia but retain the right to price and charge for the subcontracted towage services.
- Pacific Tug re-enter the harbour towage market in Bundaberg and Eden;

#### **Current Major Towage Service Providers:**

With respect to the market information provided by GPCL at section 8 in the Notification application, there is misleading information.

The main harbour towage service providers in Australian commercial ports remain to be Svitzer Australia and Smit Lamnalco. MMA Offshore and Bhagwan Marine are only engaged in the offshore oil and gas industry or construction whereas the Serco Group are not engaged in services for non-defence service vessels and not the character of industry of the main providers.

Smaller companies include Engage Marine (and its related entity Westug), Pacific Tug and Stannard Marine's Port Lincoln Tugs.

#### **Changes to the Towage Demand:**

The AIMPE observes that the Port has significantly changed to the extent that the threshold of 8000 tugs jobs has been exceeded. A contributing factor has been new wharf operations at the three LNG berths and a fourth at Wiggins. This is an increase from 15 berths in 2011 to 19 berths from 2015 – a 27% increase in berths.

The number of tugs has increased from 6 to 11 – this includes the introduction of 5 larger tugs for the commencement and increase LNG towage demand and 1 spare hull. Figure 3 in 9.2 of the GPCL King & Wood Mallesons analysis shows a conservative estimate of tug jobs exceeding the 8000 job threshold by 12.5% from the commencement of the licence to 19.8% (9,852 tugs jobs) in by the end of the proposed Authorisation period.

Whilst there are disparate increases in the job numbers and berths, the AIMPE notes that the LNG towage task requires availability of two tugs for 9 hours plus a further two tugs for 5 hours for LNG arrivals, 1 tug for safety stand by for up to 36 hours, and four tugs for departures of 6 hours. No element of GPCL submissions addresses the change in hours in operational towage and operational maintenance within the overall increase in the port's towage service delivery. Further consideration of this element is required when reviewing the Notification Application.

## **Effect on Crews Employed by Smit Lamnalco Towage (Australia)**

The effect of the exclusive licence and tender has had detrimental consequences for crews employed on tugs in the following areas.

### *- Collective Bargaining and associated rights:*

Engineers and other crew have had significant restrictions to free collective bargaining under the exclusive licence tender arrangements. The negotiations of the three respective agreements that separately cover Masters, Engineers and general purpose hands have encountered significant impediments during their renewal since 2011. These impediments are related to the cap placed on bargaining outcomes for wage increases and changes to operational crewing arrangements.

At all stages of each of the enterprise agreement renewal negotiations, the employer has claimed it cannot provide increases in wages or conditions beyond the restrictions specified in the tender contract. This is despite port growth from increased shipping as well as productivity increases realised through crew efficiencies.

That is, the imposition of the conditional approval of the exclusive licence included restrictions on increases in wages and conditions. The view of AIMPE members is that this restricts free and unimpeded collective bargaining within the terms of the Fair Work Act 2009.

A further effect of the exclusive licence system is the disruption to employment entitlements should a new operator enter the port. That is, crews are terminated by the outgoing employer resulting in a loss of accrued entitlements (e.g. sick leave, long service leave, and in some cases, loss of superannuation entitlements (including insurance)). There is no transfer of employment.

As a result, AIMPE members have experienced extreme disruption in Weipa, Townsville, Mackay, Port Hedland and Hay Point having been terminated in their employment, lost continuity of employment and risk of re-employment on lower conditions and less protections.

### *- Corporate schemes of employment avoidance*

A significant effect of the contract tender process that restricts employee rights is the developments in the use of Partnerships as an employment avoidance scheme.

The developments have occurred in private LNG and minerals ports in Port Hedland, Hay Point, Gorgon and Wheatstone. The successful tenders have all been based on the subletting of the provision of towage services by, in AIMPE's view, sham partnerships to avoid the employment relationship.

The outgoing crews are terminated and tug crews are selected by the successful tenderer on the basis that a partnership would be established for each tug requiring significant set up and insurance costs to buy a

position on a crew. Not only is the set up a cost but also the liability of crew for accidents, environmental damage, absence and costs normally borne by the tender company become the crew responsibility.

The exclusive licence tender process encourages and is a vehicle the removal of employee rights.

- *Stonewalls any increases to towage assets and crews to address growth and safety in a port:*

Typically, enterprise agreements in the towage sector contain a flexible clause to address changes in towage arrangements. In the circumstances of growth in a port, where there is agreed an increase in towage demand in a port, the representatives of each department will seek to agree on the nature of the change, the new operational requirements (including increased crews and assets) and any corresponding changes to rosters and salaries.

The exclusive licence tender contracts restrict this entitlement and protection due to variations requiring approval by parties external to the employment relationship. In the case of this licence, SLTA has continually claimed that it cannot increase headcount/crew numbers due to price restrictions. Often stated terms of this restriction is to the effect that the ACCC have placed pricing restrictions on addressing port growth and that a contract may be terminated and all will be out of a job.

Engineers are of the view that there are not enough towage assets and crews to ensure continuity of service in the port. That is, a lack of availability for tug engineers to plan for vessels out of service maintenance in this busy port places unacceptable safety risks on the towage fleet. Neglect or delay of tug maintenance accumulates with the eventual effect being tug failures/breakdowns and unscheduled or emergency maintenance.

This is a serious issue due to the requirement for operators to satisfy their towage contract requirements with the port users with high risk plant. The PWC report fails to appropriately or adequately address planned maintenance anywhere in its submission and appears to pass it as a minor event when the opposite is the case.

Smit have claimed during 2014-2017 that at least 852 hours per annum must be dedicated to planned maintenance. That is, a minimum of around a minimum of 80 days per annum are required for planned maintenance to be achieved.

The onus is then transferred from the port to the operator, who claims their hands are tied, to address and absorb maintenance hours when there are not enough assets in the port nor qualified competent crews available for maintenance and towage. AIMPE members agreed to forgo wage increases to pay for more availability for maintenance and relief crews – Engineers continue to wait for this agreement to be realised in Gladstone.

Again, companies claim that due to the tender contractual arrangements, the company cannot increase tugs or crews. The consequence is the detriment to the asset and safety of vessels, crew, port, cargo and marine environment.

- *Uneven pricing base of organised and new entrant lower cost operators.*

The changes to national maritime regulation as well as industrial relations arrangements allow for a new entrant operator to tender at lower rates or even avoidance schemes that only have a detrimental effect on employment conditions.

Whilst under the exclusive licence tender arrangements, crews of an organised incumbent are continually threatened to reduce or restrict employment entitlements or else the contract will be lost to a lower employment cost operator. This again negates free collective bargaining arrangements and rights to maintain legacy conditions achieved fairly during the contract. That is, the race to the bottom.

#### **Obligation for Emergency Towage Vessel (ETV) Response:**

Currently one SLTA tug is nominated as the emergency towage vessel response through accreditation via the Australian Maritime Safety Authority. AIMPE is of the view that an exclusive licence does not guarantee the availability of an ETV. This is due to the overall restrictions that the licence contract places on the incumbent operator to ensure that the ETV is maintained and crew are trained to ensure an operational state of readiness for response to attend to a vessel in distress.

That is, the resourcing restrictions imposed through the licence contract effect the ability of an incumbent to sufficiently balance and prioritise its internal allocation of resources to achieve profit and service.

#### **Summary**

AIMPE has outlined substantial issues that were raised as concerns in submissions in 2012. These concerns were also stated and supported by other organisations.

As a result of operational experience in representing AIMPE members in Gladstone as well as other exclusive licence ports, AIMPE is of the view that the concerns have been substantiated through tendering practices in ports that promotes the reduction or removal of employee rights.

AIMPE urges that the Notification Application seeking approval of an exclusive licence with the associated tender practices be not allowed by the ACCC.

Please contact the writer should the Commission have any queries regarding the forgoing submissions.

Yours faithfully

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For the Australian Institute of Marine and Power Engineers